

Deborah Schnell, 3/28/2014

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1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF OHIO
 3 WESTERN DIVISION
 4 HEALTHY ADVICE :
 NETWORKS, LLC, :
 5 :
 Plaintiff, :
 6 :
 vs. : Case No. 1:12CV610
 7 :
 CONTEXTMEDIA, INC., :
 8 :
 Defendant. :
 9

10 Videotaped Deposition of DEBORAH SCHNELL,
 11 a witness herein, taken by the defendant as
 12 upon cross-examination, pursuant to the
 13 Federal Rules of Civil Procedure and pursuant
 14 to notice of counsel as to the time and place
 15 and stipulations hereinafter set forth, at
 16 the offices of Keating Muething & Klekamp,
 17 PLL, One East Fourth Street, Suite 1400,
 18 Cincinnati, Ohio 45202, at 1:00 p.m., Friday,
 19 March 28, 2014, before KIRK McCracken,
 20 Videographer and ANN M. BELMONT, RPR, a
 21 Registered Professional Reporter and Notary
 22 Public within and for the State of Ohio.

23 - - -
 24

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1 APPEARANCES:

2

On behalf of Plaintiff:

3

JEANAH PARK, ESQ.

4

Vedder Price, PC

222 North Lasalle Street

5

Chicago, Illinois 60601

6

On behalf of Defendant:

7

THOMAS F. HANKINSON, ESQ.

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1 S T I P U L A T I O N S

2 It is stipulated by counsel for the
3 respective parties that the deposition of
4 DEBORAH SCHNELL, a witness herein, may be
5 taken at this time by the defendant as upon
6 cross-examination and pursuant to the Federal
7 Rules of Civil Procedure and notice to take
8 deposition, all other legal formalities being
9 waived by agreement; that the deposition may
10 be taken in stenotype by the Notary Public
11 Reporter and transcribed by her out of the
12 presence of the witness; that the transcribed
13 deposition was made available to the witness
14 for examination and signature and that
15 signature may be affixed outside the presence
16 of the Notary Public-Court Reporter.

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1 MR. McCKRACKEN: The time is 1:13
2 p.m., March 28, 2014. We are on the video
3 record and the court reporter can swear the
4 witness.

5 DEBORAH SCHNELL,
6 a witness herein, of lawful age, having
7 been first duly sworn as hereinafter
8 certified, was examined and testified as
9 follows:

10 CROSS-EXAMINATION

11 BY MR. HANKINSON:

12 Q. Ms. Schnell, thank you for
13 coming in today.

14 A. Em-hm.

15 Q. My name is Tom Hankinson. I
16 represent ContextMedia, which is the
17 defendant in this case. Do you know who the
18 plaintiff is in this case?

19 A. PatientPoint.

01:14 20 Q. And did PatientPoint at one
21 point have a different corporate name?

22 A. Yes, Healthy Advice Networks.

23 Q. Were you employed by Healthy
24 Advice Networks at one point?

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1 A. Yes, I was.

2 Q. And up until what date?

3 A. June 30, 2012.

4 Q. Have you ever given a deposition
5 before?

6 A. Yes, I have.

7 Q. In what matter?

8 A. Can you elucidate? I'm not
9 sure.

01:15 10 Q. Sure. Was it in a court case?

11 A. Yes.

12 Q. And where was the court case
13 pending?

14 A. I'm not sure, I think it was
15 either in Philadelphia or in New Jersey.

16 Q. Where did you give the
17 deposition geographically?

18 A. On the east coast.

01:15 19 Q. Oh, the deposition was in the
20 same place --

21 A. Yes.

22 Q. -- where the court was pending?

23 A. I think.

24 Q. Either Philadelphia or New

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1 Jersey?

2 A. Yes, I don't remember

3 specifically which locale.

4 Q. Do you remember what company or
5 person was the plaintiff?

6 A. Yes, PDI.

7 Q. And do you remember -- that was
8 just the only plaintiff?

9 A. Yes.

01:15 10 Q. And who was the defendant --

11 A. Oh, excuse me. Let me get this
12 straight. Oh, because the plaintiff is the
13 one that filed the suit?

14 Q. Usually.

15 A. Yes, okay. So, oh, boy. I
16 don't remember.

17 Q. Do you know who the defendant
18 was?

19 A. That would be PDI.

01:16 20 Q. Oh, I see. Did you work for one
21 of the parties --

22 A. I worked for PDI.

23 Q. What company -- what does PDI
24 do?

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1 A. It's Professional Detailing,
2 Inc., and it's a contract sales force to the
3 pharmaceutical industry.

4 Q. About when was that?

5 A. It's at least over a decade ago.

6 Q. Was that prior to your
7 employment at Healthy Advice?

8 A. Yes.

01:16

9 Q. Was it a state or a federal
10 matter, if you remember?

11 A. I don't know.

12 Q. Well, you may remember, but it's
13 been quite some time, maybe I'll go over some
14 of the basic guidelines, if that's okay with
15 you?

16 A. That'll be fine. Em-hm.

01:17

17 Q. The court reporter is taking
18 down everything that is said, so it's helpful
19 during the course of the deposition if we
20 avoid talking over one another. I may make
21 that difficult because I tend to pause
22 sometimes, lose my train of thought and then
23 get back on it and try to finish my question.
24 But to the extent that you can, try to wait

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1 until I'm completely finished and then give
2 your answer. Do you understand that?

3 A. Yes.

4 Q. And you're doing a great job of
5 this already, but always answer out loud
6 instead of shaking your head, you know, up
7 and down for yes or side to side for no and
8 try to say yes or no instead of uh-huh, which
9 can sometimes be ambiguous when you look back
01:17 10 at it, do you understand that?

11 A. Yes, I do.

12 Q. If you answer a question, I'm
13 going to assume that you understood it, are
14 you okay with that?

15 A. Yes, I am.

16 Q. If there's a point where you
17 don't understand one of my questions, please
18 ask me to repeat it or restate it or ask me
19 to clarify whatever part of it you don't
01:18 20 understand, okay?

21 A. I will.

22 Q. Appreciate that. Sometimes -- is
23 Mrs. Park representing you for this
24 deposition?

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1 A. Yes, she is.

2 MR. HANKINSON: Do you want to
3 make an appearance?

4 MS. PARK: Sure. Jeanah Park on
5 behalf of the plaintiff, PatientPoint Network
6 Solutions, LLC.

01:18

7 Q. At some point Ms. Park may
8 object to my questions, perhaps often. And
9 when that happens, please let her make her
10 full objection, and then if -- unless she
11 instructs you not to answer the question,
12 please then go ahead and answer it, okay --

13 A. I'll do that.

14 Q. If you ever need a break, let us
15 know, we'll ask that you answer any question
16 that's already been asked, but then after
17 that we can take a break.

18 A. Okay, thank you.

01:19

19 Q. About when did you become aware
20 of our case here?

21 A. I believe when I got a -- early
22 to midFebruary, when I received a phone call.

23 Q. That phone call was from an
24 attorney representing PatientPoint?

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1 A. No, it was from someone else.

2 Q. Who?

3 A. Someone else.

4 Q. Who, who was phone call from?

5 A. Mike Collette.

6 Q. Did he say at any point during
7 the phone call that he was conveying
8 information that he had received from an
9 attorney?

01:19 10 A. Not that I recall.

11 Q. What did he say to you on that
12 call?

13 A. To the best of my recollection,
14 he said I wanted to let you know that you may
15 be -- that you have been named as someone
16 that will be deposed in a suit that we have
17 filed, and I wanted you to be aware because
18 you will probably get a call from the
19 attorney.

01:20 20 Q. Did he say anything about what
21 the case was about?

22 A. No, he did not.

23 Q. Did you ask him?

24 A. Well, yes.

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1 Q. And he just said he'd prefer not
2 to talk about it or what did he say?

3 A. No. He stated that it had to do
4 with some of the practices in physicians'
5 offices, and I knew what he meant from when I
6 worked there.

7 Q. Interesting. So is all he said
8 was it's about some of the practices in
9 physicians' offices?

01:20 10 A. Well, I'm not sure those are the
11 exact words, but he was -- I knew that he was
12 referring to some of the situations that had
13 occurred when I worked there relative to our
14 rheumatology offices.

15 Q. Which situations?

16 A. The ones that are outlined in
17 the complaint.

18 Q. And which -- what is the
19 complaint that you're referring to?

01:21 20 A. That was filed by PatientPoint.

21 Q. When did you -- have you seen
22 that complaint?

23 A. Yes, I have.

24 Q. When did you see that?

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1 A. Again, I don't remember the
2 exact date, but it was late -- mid to late
3 February.

4 Q. How did you come to have that
5 complaint?

6 A. I requested it.

7 Q. From Mike on that call --

8 A. No, from Jeanah.

01:21 9 Q. So that was sometime after your
10 call with Mike?

11 A. Yes.

12 Q. On the phone call with Mr.
13 Collette, did he discuss with you whether you
14 ought to get an attorney or whether the
15 company was thinking about supplying one for
16 you?

17 A. I don't recall.

01:22 18 Q. What were the circumstances
19 under which you came to ask Ms. Park for the
20 complaint?

21 A. At --

22 MS. PARK: Just, I would instruct
23 you, if there's anything that -- don't convey
24 anything that you and I discussed about, but

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1 you can answer the question.

2 A. She contacted me to tell me that
3 I had been requested to -- for a deposition.
4 And she had asked if I -- she said, by law,
5 I'm entitled to my own representation or she
6 could represent me, which did I want, and I
7 said I wasn't sure, I would contact -- I
8 would consult my attorney. And my attorney
9 suggested that I get a copy of the complaint,
01:22 10 which that's why I asked for one.

11 Q. When did Ms. Park or her firm
12 begin to represent you?

13 A. Well, I would guess the moment I
14 said, okay, I'll accept your representation.

15 Q. That's what I'm asking about,
16 when was that?

17 A. Again, late February.

18 Q. Did you talk to anyone besides
19 attorneys about this case after your call
01:23 20 with Mr. Collette?

21 A. Yes.

22 Q. Who?

23 A. My husband, my kids, a former
24 colleague of mine, and my -- the gentleman I

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1 currently work with.

2 Q. What was the last one?

3 A. The gentleman I currently work
4 with. One of my partners.

5 Q. As to your husband and your
6 kids, did you discuss any of the facts about
7 the matter, or just the fact that the case
8 was happening and you might give a
9 deposition?

01:24 10 A. I believe I talked also of the
11 facts as I'm aware.

12 Q. With your business partner, did
13 you discuss the facts of the case with him?

14 A. Yes, the facts as I'm aware.

15 Q. What was the former colleague
16 that you spoke to?

17 A. Blake O'Neal.

18 Q. Is that a man or a woman?

19 A. A man.

01:24 20 Q. Did Mr. O'Neal work at Healthy
21 Advice at the same time as you?

22 A. Yes, he did.

23 Q. What was his position?

24 A. Sales executive.

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1 Q. Were you the head of sales at
2 the time that you worked with Mr. O'Neal?

3 A. Yes, I was.

4 Q. So was he an employee that you
5 supervised at that time?

6 A. Yes, he was.

7 Q. What did you discuss with Mr.
8 O'Neal?

9 A. Basically, I told him that I had
01:25 10 been deposed and that it was regarding
11 ContextMedia and some of the things that,
12 again, that we were made aware of when I was
13 there.

14 Q. What was the purpose of reaching
15 out to him about it?

16 A. I didn't reach out to him about
17 that. We were having a phone conversation.

18 Q. Oh, you were talking about
19 things in general?

01:25 20 A. Yes.

21 Q. Do you maintain a friendship
22 with Mr. O'Neal?

23 A. We do.

24 Q. So the purpose of the call

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1 wasn't to talk about this case?

2 A. Nope, I -- we work on other
3 opportunities together.

4 Q. Mr. O'Neal works with you as
5 well?

6 A. He has his own business, but he
7 has helped me get -- he's given me his
8 contacts of different places, it's mutually.

01:26

9 Q. What company do you work for
10 now?

11 A. Valore RX.

12 Q. Can you spell that?

13 A. V-A-L-O-R-E, R-X.

14 Q. This is in the field of
15 pharmaceutical marketing?

16 A. No.

17 Q. What's the company do?

18 A. They are PBM.

19 Q. Which means?

01:26

20 A. Pharmacy benefits management
21 company.

22 Q. Healthcare plan type situation
23 for pharmaceuticals?

24 A. PBMs typically process and pay

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1 the RXs that are filled.

2 Q. Is it a vendor to pharmaceutical
3 companies or to insurance plans?

4 A. They negotiate with PhRMA --
5 they want to keep things on PhRMA, and
6 negotiate and contract rates at pharmacy
7 typically, so there are some plans, I
8 believe, that may also be a PBM.

01:27 9 Q. Does this company have
10 customers?

11 A. Yes.

12 Q. Who are the customers of this
13 PBM?

14 A. Well, anyone who would use their
15 discount savings card would, I assume, be
16 their customer, a patient for example.

17 Q. Have you worked at Valore RX
18 since you left Healthy Advice?

19 A. Not initially.

01:27 20 Q. Did you have a job in between
21 the two?

22 A. No.

23 Q. When did you begin at Valore RX?

24 A. I don't know. The reason I say

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1 that is, I began just doing some work with
2 them, consulting, kind of helping out, and it
3 just turned into something. That was the
4 fall of 2012.

5 Q. What's the name of the business
6 partner with whom you discussed the facts of
7 this case?

8 A. Tom Borzelleri.

9 Q. Can you spell his last name?

01:28 10 A. It's a pop up on my phone, but I
11 think it's B-O-R-Z-E-L-L-E-R-I.

12 Q. What are the practices that you
13 think PatientPoint's lawsuit is about?

14 A. Well, it's stipulated in the
15 complaint.

16 Q. Right. You said that you knew
17 what it was about even before you read the
18 complaint, so what did you know it was about
19 right away?

01:29 20 A. People incenting different
21 practices to utilize Context's solution,
22 Context taking or having our product shipped
23 to their facility, and then, thirdly, going
24 into offices, making it seem like they worked

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1 for us and taking equipment down.

2 Q. The first one that you
3 mentioned, incenting different practices to
4 use ContextMedia's solution, what did that
5 entail?

6 A. I'm not sure of any or all of
7 the methods, but I believe they offered them
8 different types of -- what do you call it?
9 Like monetary cards and things like that, and
01:30 10 lunches.

11 Q. Who did they -- who's they?

12 A. Context.

13 Q. Sales representatives for
14 Context?

15 A. I have no idea.

16 Q. And who were they giving the
17 money or lunches to?

18 A. I don't have the specific names
19 of the practices, if that's what you're
01:30 20 asking, but to offices that had our network,
21 rheumatology network installed.

22 Q. And when you say our network,
23 you mean --

24 A. Healthy Advice.

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1 Q. Healthy Advice's ACN?

2 A. Correct, Arthritis Care Network.

3 Q. The monetary cards, were those
4 gift cards like from a major credit card
5 company?

6 A. I don't know.

7 Q. But in any event, it was a
8 direct transfer of cash in some form from
9 ContextMedia to a point of contact at a
10 doctor's office that you're talking about?

01:31

11 A. I don't know if it was cash. As
12 I said, it may have been lunches and things
13 like that.

14 Q. Did you know at the time and you
15 forget, or did you never know?

16 A. I never knew.

17 Q. At the time, what did you think
18 about the idea that ContextMedia would give
19 something of value, such as either cash or
20 lunches or another substantial gift to a
21 practice in order to give that practice an
22 incentive to select ContextMedia's service
23 over Healthy Advice's service?

01:32

24 A. Could you -- I'm not

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1 understanding when you ask the question, what
2 did I think?

3 Q. Yeah, what did you think about
4 that or how did you feel about it?

5 A. I didn't think it was an
6 appropriate practice. I don't think it's an
7 appropriate practice.

8 Q. Did you think that it made any
9 difference?

01:32 10 A. I would have no way of knowing.
11 I wasn't out in the field, but it's
12 irrelevant whether it's right or wrong.

13 Q. What's irrelevant?

14 A. Whether it made a difference.

15 Q. So it's -- it's inappropriate in
16 your eyes no matter whether it caused the
17 practices to change their behavior or if it
18 didn't?

19 A. Yes.

01:33 20 Q. And what's the source of the
21 rule or the, you know, the principle that
22 makes it inappropriate?

23 A. The PhRMA guidelines, the PhRMA
24 code guidelines that the manufacturers all

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1 sign up for.

2 Q. P-H-R-M-E?

3 A. M-A.

4 Q. M-A. Is that a code of ethical
5 guidelines that applies to the marketing of
6 pharmaceuticals?

7 MS. PARK: Objection, form. You
8 can answer.

01:33

9 A. I'm not sure if it has to do
10 with pharmaceuticals or just in general the
11 way they approached the practices. I --

12 Q. The way who approached the
13 practices?

14 A. The PhRMA companies.

15 Q. Who publishes the PhRMA
16 guidelines?

17 A. I do not know.

18 Q. Why do you think they're
19 important?

01:33

20 A. Because it's the rules on which
21 have been established in terms of how to
22 ethically participate in physician practices.

23 Q. But you don't know if it's a
24 government body, a non-profit, a

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1 pharmaceutical company, a group of
2 pharmaceutical companies, or somebody else
3 who publishes it?

4 A. To the best of my knowledge, it
5 is a group of the pharmaceutical companies.
6 It's the code of ethics that they established
7 to govern themselves.

8 Q. Why would it apply to Healthy
9 Advice or Context?

01:34 10 A. When -- because when you build a
11 network on behalf of someone else, you
12 represent them.

13 Q. And do you think that's a major
14 part of the actions by Context that were
15 inappropriate at the time?

16 A. It's certainly part.

17 Q. At the time, isn't it true that
18 you were concerned that the incentives that
19 were being given to practices was having a
01:35 20 direct impact on the number of practices that
21 were switching from Healthy Advice to
22 ContextMedia?

23 MS. PARK: Objection, form.

24 A. I believe that that was what our

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1 field sales folks thought, yes.

2 Q. Are the field sales folks the
3 people who have the best information at
4 PatientPoint about what impact any particular
5 action or communication having to do with the
6 practice has on whether that practice chooses
7 to be in a digital screens network or to
8 switch between networks?

9 MS. PARK: Objection, form.

01:35 10 A. I believe that they are the ones
11 calling on the practice so they are closest
12 to it.

13 Q. Is that the team that you relied
14 on when you were making decisions that had to
15 do with what the practices were doing and the
16 choices the practices were making at the
17 time?

18 A. I don't think I understand the
19 question.

01:36 20 Q. Well, your role was in sales of
21 advertising contracts to pharmaceutical
22 companies and the agencies that represented
23 them, right?

24 A. Correct.

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1 Q. Sometimes those clients -- can I
2 call them clients?

3 A. If you're speaking about the --
4 the ones who exchanged dollars with us for
5 advertising, yes.

6 Q. Okay. And the ones who exchanged
7 dollars with you for advertising are the
8 decision makers in terms of whether
9 sponsorship contracts are entered into with
01:37 10 Healthy Advice, right?

11 A. That would be correct.

12 Q. So we can refer to them as
13 clients?

14 A. Yes.

15 Q. When you were communicating with
16 clients, did they sometimes have an interest
17 in the footprint of the network that they
18 were considering advertising on?

19 A. That would be correct.

01:37 20 Q. By the footprint, we mean the
21 size of it?

22 A. That would be correct.

23 Q. How many doctors' offices or,
24 you know, the waiting rooms of how many

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1 doctors the network was reaching?

2 A. Yes.

3 Q. That's what a footprint is?

4 A. Yes.

5 Q. Sometimes, were the clients
6 interested in how quickly or how reliably
7 Healthy Advice could expand the footprint of
8 a given network?

9 A. Sometimes, not often.

01:37 10 Q. And when they cared about that,
11 you and your team would be responsible for
12 communicating with them about it, right?

13 A. Yes.

14 Q. So in those circumstances when
15 you're communicating with a client about the
16 footprint or the rate of expansion of a
17 footprint in the field -- what was the team
18 that you mentioned earlier?

01:38 19 A. You mean the ones for
20 physicians' offices? I don't know what they
21 formally called themselves, but we called
22 them field sales force.

23 Q. Was the field sales force, in
24 those situations, the team that you relied on

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1 for your -- the company's best information
2 about what practices were doing and what was
3 important to them?

4 MS. PARK: Objection, form.

5 A. We certainly got information
6 from them, but much of it was delivered
7 through our COO.

8 Q. Is your impression that your COO
9 had an independent source of information
10 other than the field sales team?

01:38

11 A. I don't believe so.

12 Q. Was the field sales team headed
13 up by Jill Brewer at the time that you were
14 employed by Healthy Advice?

15 A. Yes.

16 Q. Was Amy Finley in the management
17 of the field sales team?

18 A. Yes.

19 Q. Do you remember any other
20 managers in the field sales team?

01:39

21 A. No, but if you said the names,
22 I'm sure I would recall them.

23 Q. Heather McGauvran?

24 A. I don't know.

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1 Q. Phyllis Timole, maybe she was a
2 field sales rep?

3 A. Yes, I don't recognize that
4 name.

5 Q. Not sure. It strikes me at some
6 point that you communicated to at least a
7 client, if not multiple clients, about the
8 footprint of ACN and some perceived slowness
9 in ramping up that footprint. Do you

01:40 10 remember anything about that at this point?

11 MS. PARK: Objection, form.

12 A. I did not communicate with any
13 client regarding a footprint size. I'm not
14 sure, I would imagine the salesperson that
15 had the network, I would imagine, I wasn't on
16 any of her calls, but I would imagine at some
17 point it's a possible subject that came up.

01:40 18 Q. You weren't ever copied or
19 included in communications to clients about
20 the practices of ContextMedia or other
21 competitors in marketing digital screens to
22 providers?

23 A. I'm sure I got copied on a lot
24 of things. Whether or not it was in my main

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1 purview, whether or not I read through the
2 whole thing, you know, I don't know. I mean,
3 I'm sure I didn't, is what I'm saying.

4 Q. So you don't remember that,
5 today, ever -- let me start again.

6 As of sitting here today, you
7 don't remember any occasions on which you
8 were directly interested in the communication
9 to clients about communications and actions
01:41 10 taken by competitors in the field who were
11 trying to sell digital screen networks for
12 the providers --

13 A. I'm not sure what you're
14 asking --

15 MS. PARK: Objection, form.
16 Objection. It misstates prior testimony.

17 Q. You don't understand the
18 question?

19 A. No, I don't.

01:41 20 Q. I think what I'm hearing you say
21 is that this -- maybe you were copied or
22 involved in communications, but it wasn't
23 something you cared about?

24 A. Well, I care about the business,

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1 but there are other people that handle things
2 and you know it's going to -- you know.

3 Q. And what I'm trying to ask you
4 now is, do you remember any occasions where
5 you were directly interested in those types
6 of communications to clients?

7 MS. PARK: Objection, form, vague
8 as to types of communications.

01:42

9 A. I don't recall being involved in
10 the direct communication to a client or
11 asking to see how it was being conveyed.

12 Q. Or even being interested in what
13 was being conveyed to the client about that?

14 MS. PARK: Objection, form.

15 A. Well, of course I had an
16 interest.

17 Q. And do you remember any
18 particular occasions on which you were
19 interested?

01:42

20 A. I'm trying to think back.
21 Because of what we uncovered that was
22 happening in the -- out in the marketplace,
23 the individual that had the account, we would
24 have meetings to talk about making sure we

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1 maintained our numbers, and I'm talking about
2 ACN, in ACN, and how we could make sure that
3 we met our contract deliverables. And so
4 during that conversation, they were certainly
5 talking about what was happening. Now, how
6 that was conveyed the client, I don't know.

7 Q. ACN is the only network that you
8 remember taking an interest in these
9 communications?

01:43 10 A. I'd say yes, to the best of my
11 knowledge.

12 Q. And the brand at the time that
13 had exclusivity of advertising over ACN, was
14 that Humira?

15 A. Yes, it was.

16 Q. Was the individual you
17 mentioned, Linda Ruschau?

18 A. Yes.

01:44 19 Q. In those communications that you
20 were interested in, was there anybody else
21 involved?

22 A. Well, help me out. When you say
23 "those communications," what are you talking
24 about, are you talking about dialogue? Are

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1 you talking about --

2 Q. It seemed like you were
3 remembering something in particular.

4 A. Not written communications. I'm
5 talking about internal meetings when we would
6 discuss what our strategy was.

7 Q. Who was at those meetings?

8 A. Sometimes it varied, but on --
9 by and large, it would have been Linda, Jill,
01:44 10 Tom Campbell, on occasion myself, and on
11 occasion, Mike McAllister, to the best of my
12 knowledge.

13 Q. At those meetings, would Ms.
14 Brewer and Mr. Campbell be the people who
15 conveyed whatever information there was to be
16 conveyed about the side of the business that
17 was interacting with the doctors' offices?

18 A. Typically, yes.

19 Q. Were those formal meetings or
01:45 20 just kind of haphazard?

21 MS. PARK: Objection, form.

22 A. I think both.

23 Q. Were there meeting invitations
24 sent out by e-mail or in an Outlook or

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1 Eudora type of --

2 A. I think so.

3 Q. Were there agendas prepared?

4 A. I don't -- if there was, I don't
5 recall, but that doesn't mean there wasn't.

6 Q. Did anyone take notes at those
7 meetings?

8 A. I don't know.

9 Q. Did you take notes?

01:45 10 A. I don't know.

11 Q. You don't know whether you did
12 or didn't?

13 A. This was three years ago, I
14 really don't.

15 Q. What was the size of the
16 provider market for ACN?

17 A. What do you mean, provider
18 market?

01:46 19 Q. The number of doctors or the
20 number of doctors' offices that ACN's digital
21 screens could reach potentially.

22 A. I have no idea.

23 Q. What was the size of the
24 provider market for PCN?

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1 A. When you say size of provider,
2 let me make sure I understand. Do you mean
3 the footprint that they already had or how
4 many doctors were in the universe?

5 Q. I would be interested in both,
6 but right now I'm asking about entire
7 universe.

8 MS. PARK: Objection, form.

9 A. I have no way of knowing.

01:46 10 Q. What about the second question?
11 How many doctors' offices or doctors PCN
12 actually had in its footprint?

13 MS. PARK: Objection, form, vague
14 as to time period.

15 A. I don't remember.

16 Q. Over the years, had Healthy
17 Advice had digital screens in the waiting
18 rooms of hundreds of thousands of doctors'
19 offices?

01:47 20 A. Not that I'm aware of.

21 Q. Over 100,000?

22 A. No, not that I'm aware of. I
23 mean, I couldn't give -- that's why I said
24 before, I couldn't give you -- not that I

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1 recollect, I couldn't give you specifics,
2 but, no to that. I can tell you no.

3 Q. Do you remember what the
4 footprint of ACN was at the time that you
5 were head of sales?

6 A. I don't remember. I would say,
7 but I could be wrong, because you'll have to
8 go check, I would say it's anywhere between
9 1,000 to 2,000.

01:47 10 Q. In the meetings that you
11 attended about the activities in the field
12 with respect to trying to place screens in
13 providers' offices, what were the activities
14 in the field that were discussed in terms of
15 impacting the footprint or how quickly the
16 footprint could expand for ACN?

17 A. I'm not sure I understand the
18 question again.

19 Q. You were discussing meetings
01:48 20 about the practices in the field --

21 A. Em-hm.

22 Q. -- that were occurring with
23 competitors, including ContextMedia in
24 marketing digital screen network services to

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1 doctors' offices, right?

2 A. Em-hm.

3 Q. There were those meetings?

4 A. Yes.

5 Q. And some of them you attended?

6 A. Yes.

7 Q. And what I'm asking is, what
8 activities in the field were being discussed
9 at those meetings?

01:48 10 A. Oh, I think I already told you
11 at the beginning.

12 Q. So each of the activities that
13 you listed for me earlier were having an
14 impact on the footprint or the rate of
15 footprint expansion?

16 A. Yes.

17 Q. So just to recap them quickly,
18 at the time, giving direct incentives in
19 terms of money or other valuable items to
01:49 20 practices had an impact on the footprint or
21 the rate of footprint expansion, correct?

22 A. Yes.

23 Q. Correct?

24 A. Yes, that was a belief.

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1 Q. And at the time the
2 understanding was that doctors' offices being
3 confused about whether a competitor was
4 actually Healthy Advice was also having an
5 impact on the footprint of ACN or the rate of
6 that footprint expansion?

7 A. I'm not sure what that question
8 means or that statement meant.

9 MS. PARK: Objection.

01:49 10 Q. One of the things that you
11 mentioned to me earlier was somebody going
12 into a doctor's office and giving the
13 impression that they were from Healthy
14 Advice --

15 MS. PARK: Objection, form.
16 Misstates prior testimony.

17 Q. -- when they weren't actually?

18 A. Yes.

19 Q. That's what I'm referring to.

01:50 20 A. Okay.

21 Q. And I'm just recapping that. At
22 the time of these meetings that you
23 participated in, the understanding was that
24 that impersonation was having an impact on

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1 the footprint or the rate of expansion of the
2 footprint of ACN?

3 A. Yes.

4 Q. Now, the other activity that you
5 mentioned to me had to do with shipping a
6 piece of equipment to ContextMedia's office?

7 A. Yes.

8 Q. Now, that wouldn't have an
9 impact on a provider entering into a network
01:50 10 or not, that must have been something
11 different?

12 MS. PARK: Objection, form.
13 Misstates prior testimony.

14 A. I don't know.

15 Q. You don't remember that coming
16 up at the meetings as something that was
17 decreasing retention of ACN practices within
18 the network or being a damper on new
19 practices coming into the network?

01:51 20 A. No.

21 Q. No, that didn't come up at the
22 meeting?

23 A. No, I don't remember that it was
24 specifically stated that that would impact

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1 new customers coming in.

2 Q. It probably wouldn't because
3 it's shipping a piece of equipment, right?

4 MS. PARK: Objection, form.

5 Q. I don't see how it could. Can
6 you think of a way?

7 MS. PARK: Objection, form.

01:51

8 A. I think it has more to do with
9 people trying to understand what we have to
10 improve their marketing capability, so, yes,
11 I do think it has a direct marketing impact.
12 And I think you do, too.

13 Q. And you think what?

14 A. I said I think you would too.

15 Q. Well, if it never happened --
16 let me start over.

17 Let's assume that the piece of
18 equipment -- was it a CPU?

19 A. I'm not sure. I believe so.

01:52

20 Q. So whatever piece of equipment
21 we're talking about, you understood that
22 someone had shipped it to ContextMedia,
23 right?

24 A. That was my understanding.

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1 Q. And what you're saying is that
2 there's a way in which that equipment being
3 at ContextMedia could, through study or use
4 in some way, impact the size of ACN's
5 footprint? ContextMedia's ability to compete
6 with ACN?

7 A. Yes.

01:53

8 Q. And if we assume that the
9 information on that piece of equipment was
10 made publicly available in some way, then any
11 impact on ContextMedia's marketing ability
12 would be legitimate instead of illegitimate,
13 right?

14 MS. PARK: Objection, form.

15 A. Could you elucidate? I don't
16 understand where you're going, or what you're
17 asking, I should say.

01:53

18 Q. You're saying that there's
19 something on that equipment that may have
20 impacted ContextMedia's ability to compete in
21 recruiting rheumatology offices, right?

22 A. Yes.

23 Q. And I'm asking you, if that
24 information, whatever information was on that

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1 CPU, was actually publicly available, assume
2 it was publicly available, then --

3 A. It's not.

4 Q. I'm asking you to assume that it
5 was available in some public way, then
6 whatever impact that had on ContextMedia's
7 ability to market would then be okay, it
8 would be legitimate?

9 MS. PARK: Objection, form --

01:54 10 A. Well, I can't answer that
11 because you said assume it was in the public
12 domain. It is not in the public domain, so I
13 would have no way of knowing.

14 Q. Well, you don't even remember
15 what the equipment was.

16 A. Well, the reason I say that is
17 because there are different components, and
18 the -- when I -- I would get reports, for
19 example, I didn't really look what part it
01:54 20 is, rather that I would look at it as a very
21 high level in terms of trying to understand,
22 and as it was described to me by our experts
23 internally, that within and where it's
24 housed, I don't know, but within there is not

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1 just the context for the creative, but a lot
2 of microcoding -- and microcoding may not be
3 the correct word, but coding and different
4 things that allow our system to behave in
5 certain ways, of which I don't know what they
6 are, but that's how it was explained to me.

7 Q. So it doesn't just include the
8 loop content?

9 A. That was my understanding.

01:55 10 Q. And if it did just include the
11 loop content, then there would be no problem
12 because that's available in the laws of 500
13 or 1,000 doctors' offices, right?

14 MS. PARK: Objection, form --

15 A. I have no idea. I mean, I know
16 it's available, but I have no idea what
17 the assumptions would be.

18 Q. I didn't understand your answer.

19 A. When you said to assume, then
01:55 20 what would happen, I don't know, because
21 that's not the case.

22 Q. Right. But the loop content
23 wasn't considered secret at the time. The
24 discussions were around the other things that

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1 you thought were on the CPU?

2 MS. PARK: Objection, form.

3 A. I think that it was two-pronged,
4 and when I say that, my understanding is that
5 there was a lot of history of information as
6 well, and so whatever is currently out there
7 that someone could see at one point in time,
8 that doesn't mean -- so there's a lot of
9 different content information, too, that was
01:56 10 quite valuable.

11 Q. Who explained that to you at the
12 time?

13 A. Mike McAllister.

14 Q. And how did he come across that
15 information?

16 MS. PARK: Objection, foundation.

17 A. I don't know.

18 Q. What year was it?

19 A. Again, this is going back, so I
01:56 20 don't know if it was -- I don't even know
21 when it started. I don't know if it was
22 2011, I don't know if it was 2010, I don't
23 recall. But somewhere in that general time
24 frame I think.

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1 Q. Did you know that Healthy Advice
2 abandoned CPUs in doctors' offices --

3 MS. PARK: Objection, form.

4 Q. -- around that time?

5 MS. PARK: Sorry. Objection,
6 form.

7 A. No.

8 Q. You weren't aware of that?

9 A. To my knowledge, I don't believe
01:57 10 they did.

11 Q. No one ever told you that they
12 did?

13 A. No.

14 MS. PARK: Objection, form.

15 Q. It would be quite different --
16 it would be a quite different situation from
17 what you were informed at the time if in fact
18 the information that was on that piece of
19 equipment was also on equipment that had been
01:57 20 left at practices with no nondisclosure
21 agreements and no ongoing relationship with
22 Healthy Advice, right?

23 MS. PARK: Objection, form.

24 A. I don't know.

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1 Q. Why don't you know that?

2 MS. PARK: Objection.

3 A. Why don't I know what?

4 Q. It would be quite a different
5 situation if the same information was just
6 abandoned at a -- at several doctors' offices
7 at around the same time, right?

8 MS. PARK: Objection, form.

9 A. No. I don't understand what
01:57 10 you're trying to ask me, honestly.

11 Q. You seemed to be quite concerned
12 that confidential information was on the
13 piece of equipment that you're saying you
14 understood was shipped to ContextMedia,
15 right?

16 A. Correct.

17 Q. If that same information was on
18 equipment that Healthy Advice freely let lie
19 at doctors' offices who had terminated their
01:58 20 relationship and had no nondisclosure
21 agreement, then wouldn't that be a different
22 situation?

23 MS. PARK: Objection, form.

24 A. First of all, I don't know

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1 that -- I don't know that that is correct,
2 that they abandoned equipment at the office.

3 Secondarily, if something is
4 sitting there and those offices aren't
5 dissecting everything and aren't competitors,
6 that's a very different situation than
7 somebody purposefully taking something.

01:58

8 Q. Would you have let a member of
9 your sales team give proprietary information
10 to a potential client without a nondisclosure
11 agreement in place?

12 A. I think probably, based on the
13 relationship with the client.

14 Q. So PatientPoint, at the time
15 that you were the head of sales, would not
16 necessarily require potential sponsors to
17 sign a nondisclosure agreement before seeing
18 proprietary information in the pitches?

19 MS. PARK: Objection, form.

01:59

20 A. First of all, most of our
21 clients require NDAs upfront, because we
22 analyzed their data, so pretty much had NDAs
23 or CDAs in place.

24 Secondly, relative to the

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1 content, that stuff was just created on an
2 ongoing basis.

3 Q. What content?

4 A. That was on the digital screens,
5 the health education content.

6 Q. I'm talking about proprietary
7 information.

8 MS. PARK: Objection, form,
9 vague.

02:00 10 A. Yeah, I'm not -- I don't
11 understand.

12 Q. Your sales team made pitches to
13 clients, right?

14 A. Absolutely.

15 Q. Did some of those pitches
16 include PatientPoint's proprietary
17 information?

18 A. I don't believe so.

02:00 19 Q. So the pitches that were made to
20 potential sponsors did not include
21 proprietary information of PatientPoint?

22 MS. PARK: Objection, form.

23 A. Ask me again, because I want to
24 get this right, and I want to make sure I

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1 understand what you're asking me.

2 Q. The pitches --

3 A. Yes.

4 Q. -- that your sales team made to
5 clients --

6 A. Yes.

7 Q. -- did not include
8 PatientPoint's proprietary information?

9 MS. PARK: Objection, form, vague

02:01 10 as to the term proprietary information --

11 Q. Is that a true statement?

12 A. I don't believe so.

13 Q. If something that a member of
14 your team was conveying to a client was
15 confidential and proprietary and it was
16 valuable to PatientPoint that it remain a
17 secret, assume that's the case, would you
18 require a nondisclosure agreement before that
19 piece of information was given to the client?

02:01 20 MS. PARK: Objection, form, vague
21 as to the term proprietary information.

22 A. Yeah, I don't know.

23 Q. You might not?

24 A. Yeah.

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1 MS. PARK: Objection, form.

2 Q. Because the relationships with
3 the clients are such that information would
4 just flow freely between PatientPoint and the
5 client?

6 MS. PARK: Objection, form.

7 A. Em-hm.

8 Q. Regardless of whether or not a
9 disclosure agreement was in place?

02:02 10 MS. PARK: Objection, form.

11 A. Yes.

12 (Exhibit 97 identified.)

13 Q. I'd like to hand you a document
14 that we're going to mark as Defendant's
15 Exhibit 97.

16 A. Am I going to have to read
17 something?

18 Q. Potentially.

19 A. Okay.

02:02 20 Q. Go ahead and take a look at it.

21 Thank you. I guess I should have just said
22 yes. Is this an e-mail from you to Mike
23 Collette copying Tom McGinness, Tom Campbell,
24 Jill Brewer and Scott Nesbitt?

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1 A. That's what it looks like.

2 Q. And it's dated February 27,
3 2012?

4 A. Em-hm.

5 Q. Does it look like it replies to
6 or forwards a prior e-mail from Mike
7 Collette?

02:03

8 MS. PARK: Could you give the
9 witness a chance to read the document? She's
10 still reading it.

11 MR. HANKINSON: Am I stopping
12 her?

13 MS. PARK: You're asking her a
14 question while she's still reading the
15 document.

16 A. Okay.

17 Q. Do you need to hear the question
18 again?

19 A. Yes.

02:05

20 Q. Does it look like you were
21 replying to or forwarding a prior e-mail from
22 Mike Collette?

23 A. I am guessing that I am
24 responding to -- because I don't recall this

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1 e-mail, but I am guessing I'm responding to
2 the step in next steps, point one. It sounds
3 like they have launched diabetes network in
4 addition to the arthritis, and that's why I
5 wanted to come back and tell him, actually,
6 that's their claim to fame, that's how they
7 started. So I think that's what I was
8 responding to.

02:06 9 Q. And how did you know that that
10 was their claim to fame and how they started?

11 A. Because for quite a while it was
12 the only network they had.

13 Q. Right. How did you come to be
14 aware of it?

15 A. Because you understand who's in
16 the marketplace.

17 Q. How do you become aware of them?

18 A. It's my job. You read.

19 Q. Read what?

02:06 20 A. Read the trades --

21 Q. I'm sorry to be oversimplifying,
22 but --

23 A. Well, read the trade magazines,
24 read the announcements, you know, so-and-so

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1 just launched.

2 Q. So diabetes came first in terms
3 of network sponsor --

4 A. That was --

5 Q. -- that were put on by --

6 A. Yes.

7 (Interruption by Reporter.)

8 Q. -- ContextMedia? I'm sorry, if
9 we could avoid talking over each other, it'll
02:06 10 help.

11 A. Okay.

12 Q. So yes?

13 A. Yes.

14 Q. And then rheumatology followed?

15 A. That's my understanding.

16 Q. When did you first hear about
17 ContextMedia's rheumatology offering?

18 A. I don't recall.

19 Q. When did you first become
02:07 20 concerned about ContextMedia's competition in
21 the rheumatology space?

22 A. I don't recall. Whenever, you
23 know, the field salespeople started bringing
24 it to our attention and the sales rep, Linda.

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1 They would take it to her, I think, actually,
2 but then she would come to tell me. I don't
3 remember if you're asking me the dates.

4 Q. Your only concerns were the
5 concerns brought to your team by the field
6 salespeople?

7 A. Yes, and then, as a subsequent
8 to that, by Linda Ruschau on behalf of the
9 client.

02:08 10 Q. The same concerns being passed
11 from Linda Ruschau to you?

12 A. Yes.

13 Q. You weren't aware of other
14 things that ContextMedia was doing out in the
15 marketplace independent of what you're
16 receiving -- the information you were
17 receiving from the field sales team?

18 A. I'm not understanding.

02:08 19 Q. Were you aware of other
20 activities of ContextMedia in the marketplace
21 outside of the information --

22 A. No.

23 Q. -- that came to you from field
24 sales --

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1 A. Not that I recall.

2 Q. -- through Linda Ruschau --

3 A. Not that I recall.

4 MS. PARK: Let him finish the
5 question.

6 A. My bad.

7 Q. And I didn't mean to be mean
8 before when I was reminding you about that --

9 A. That's okay.

02:08

10 Q. -- I'm just trying to.

11 I'd like you to look at, in Mr.
12 Collette's e-mail, the fifth paragraph down
13 starting with "Said Agencies."

14 A. Uh-huh.

15 Q. "Said Agencies like their
16 product," their product refers to the product
17 of Health Focus Media, right?

18 A. Em-hm.

19 MS. PARK: Objection, foundation.

02:09

20 Q. Yes? You said em-hm.

21 A. It appears, uh-huh. As I said,
22 it appears.

23 Q. "Said Agencies like their
24 product but they struggle to get buys,"

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1 B-U-Y-S, "due to their limited reach."

2 Limited reach would be the footprint of the
3 network, right?

4 MS. PARK: Objection, foundation.

5 A. Correct.

6 Q. "They said clients would rather
7 work with a Healthy Advice or and Accent," I
8 assume that means that that should be a
9 Healthy Advice or an Accent, referring to
02:10 10 Healthy Advice and Accent, which is a
11 competitor of Healthy Advice?

12 MS. PARK: Objection, foundation.

13 A. I would assume.

14 Q. So Mr. Collette's saying that
15 Health Focus Media, "said clients would
16 rather work with a Healthy Advice or and
17 Accent and do one buy than cobble together a
18 lot of smaller buys from smaller networks."
19 So one buy refers to one purchase of digital
02:10 20 screens network advertising, right?

21 MS. PARK: Objection,
22 foundation --

23 A. I would assume.

24 Q. Are you aware of any other

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1 meaning that Mr. Collette could have in this
2 e-mail?

3 MS. PARK: Objection foundation.

4 A. I'm not.

5 Q. Is that the meaning that you
6 take away from it based on your experience in
7 the industry?

8 A. Yes, it is.

9 Q. And Mr. Collette is contrasting
02:11 10 Healthy Advice or Accent who can put together
11 one large buy one, one buy, with a large
12 footprint with Health Focus, which would have
13 a smaller footprint, such that a client to
14 get the same amount of exposure would have
15 to, as he says, cobble together various
16 networks, right?

17 MS. PARK: Objection, form,
18 foundation.

19 A. Yes.

02:11 20 Q. So the idea here is, it's quite
21 hard for someone with a very small network
22 footprint to make any impact in the market,
23 because a client would prefer to have a more
24 consolidated approach to their advertising

Deborah Schnell, 3/28/2014

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1 buys?

2 A. No, not necessarily.

3 MS. PARK: Objection, form,
4 foundation.

5 Q. So what would the situation be
6 that's the exception to that?

02:12

7 A. It would, in my professional
8 opinion, be true for somebody who wanted to
9 reach a large broad-based primary care, and
10 if somebody is starting in that area, unless
11 you have -- that's where they may have to
12 cobble. There are other drugs brands that are
13 specifically targeting very small
14 specialties. That's why you have an
15 arthritis care/rheumatology network, that's
16 why you have a gastroenterology network, they
17 are much smaller in scope and size. It makes
18 business sense.

02:12

19 Q. But there's some threshold of
20 footprint no matter what the specialty or
21 lack of specialty is where the number of
22 practices is so small that the digital screen
23 provider just couldn't get any headway,
24 right?

Deborah Schnell, 3/28/2014

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1 MS. PARK: Objection, form.

2 A. No, I don't believe that's true.

3 Q. If I had a single doctor, I
4 could approach Johnson & Johnson and sell
5 some advertising space?

6 MS. PARK: Objection, form.

7 A. Okay. Let me redirect. Yes,
8 but, again, it depends. It could be 500, it
9 could be -- but no one would do it for one,
02:13 10 you're probably correct. I don't believe
11 anyone would do it for one.

12 Q. But once you get up in the range
13 of four or five hundred, then that's big
14 enough within a specialty to be a
15 considerable part of that market?

16 A. Yes, for that client. If it's a
17 small speciality niche.

18 Q. So in a small speciality. Would
19 you consider rheumatology a small speciality?

02:13 20 A. I do.

21 Q. Once you're up to about 400
22 offices, that is a substantial segment of the
23 market where a client might be interested in
24 that number of practices?

Deborah Schnell, 3/28/2014

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1 A. I don't think I'd use the word
2 substantial. I think that it would -- it
3 could get their attention, but there are some
4 clients who may want to reach more.

5 Q. So you wouldn't use the word
6 substantial segment until it's higher than
7 400 practices?

02:13

8 A. No, that's -- that is what I
9 said in this case. But you'd have to do an
10 analysis on each of the specialties, you may
11 look at something totally different in
12 oncology, in neurology, and I don't have the
13 data in front of me to make that
14 determination.

15 Q. You're just answering as far as
16 rheumatology goes?

17 MS. PARK: Objection, form.

18 A. Yes, I'm sorry.

02:14

19 Q. So and -- and I'm sorry if I'm
20 slow to put it all together, but in the field
21 of rheumatology, in digital screen networks
22 that go in rheumatology practices, a
23 substantial segment of the market would be
24 somewhere more than 400 screens?

Deborah Schnell, 3/28/2014

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1 A. Okay. Again, I would not use
2 the word substantial, but it would be enough
3 to get a client's attention.

4 Q. So at what point would it become
5 a substantial segment of the market?

6 A. I don't know, because I don't
7 have the data in front of me for all that.

8 Q. But it would be more than 400?

9 A. Likely.

02:15 10 Q. And what you're saying earlier
11 is something like primary care where there
12 are tens of thousands, possibly even more
13 than 100,000 doctors' offices, what would
14 constitute a substantial segment of that
15 market would be a lot higher?

16 A. Yes, that would be correct.

17 (Exhibit 98 identified.)

18 Q. I'm handing you what we are
19 marking as Defendant's Exhibit 98.

02:16 20 A. Thank you.

21 Q. And I guess you should always
22 feel free to read an entire document that I
23 put before you. My general practice is that
24 I'll ask questions, and if you feel the need

Deborah Schnell, 3/28/2014

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1 to read the document, then you'll read it
2 before you answer.

3 A. Okay.

4 Q. Are you okay with operating like
5 that?

6 A. I can refer back to this if I
7 need to?

8 Q. As much as you want.

9 A. Okay.

02:16 10 Q. Who is Jamie -- is it Kozma?

11 A. I don't know how --

12 Q. You don't know how to pronounce
13 it?

14 A. No, I don't.

15 Q. Do you know who he is?

16 A. I'm not -- I do not know what
17 his title is, but I do know he works for J3.

18 Q. What's J3?

19 A. It's an agency.

02:16 20 Q. In 2011, was J3 the agency --
21 well, what clients were they handling for
22 Healthy Advice?

23 A. I don't know.

24 Q. It wasn't Humira?

Deborah Schnell, 3/28/2014

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1 A. No, definitely not.

2 Q. Because that was Target Health?

3 A. I believe that would be correct.

4 Q. And then, subsequent to that,
5 Spark?

6 A. I have no idea. I don't.

7 Q. In any event, this e-mail chain,
8 top one in the chain is dated October 31,
9 2011.

02:17 10 A. Em-hm, yes.

11 Q. And that's from Mr. Kozma,
12 that's, K-O-Z-M-A, to you, and it copies Kim
13 Coar?

14 A. That's correct.

15 Q. Who is Kim Coar?

16 A. Kim was another one of the sales
17 executives that reported to me.

18 Q. What was her territory?

02:17 19 A. I don't recall everything
20 necessarily, but the majority of it would
21 have been Merck and Pfizer.

22 Q. M-E-R-C-K, the pharmaceutical
23 company?

24 A. Yes, yes. And she may have had

Deborah Schnell, 3/28/2014

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1 one or two smaller accounts, but that
2 constituted the large majority of her.

3 Q. Territory?

4 A. Business, em-hm.

5 Q. I'd like to refer you to the
6 second e-mail down in the chain, which is
7 from you, correct?

8 A. Yes.

02:18 9 Q. That e-mail is to Mr. Kozma at
10 J3, and it cc's Kim Coar, right?

11 A. Correct.

12 Q. And the subject line of that is,
13 forward more edits.

14 A. Was that a question?

15 Q. Correct.

16 A. Oh, I'm sorry.

17 Q. No, that's my fault.

18 A. Oh, yes. The subject is more
19 edits.

02:19 20 Q. I meant to put the question in
21 my voice, but I didn't, so that's totally my
22 fault.

23 A. Sorry.

24 Q. In the second paragraph of your

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02:19

1 e-mail to Mr. Kozma, you say, "Secondly, we
2 appreciate the very candid feedback you
3 provided after your discussions with
4 ContextMedia. Jamie, having been in business
5 for over 23 years and recruited," and then
6 there's a number, it's 100,000, "physician's
7 (including replacement/churn) we are keenly
8 aware that practices do in fact ask who the
9 brand sponsors will be; they want to know
10 what will be running in their practice, it
11 simply makes good business sense." Do you
12 know whether that number was intended to be
13 100,000 or 10,000 or something else?

02:20

14 A. This is a guess, but I would
15 guess that it means 100,000. And I don't have
16 the data and statistics, but I did at the
17 time relative to what the churn is, because
18 you're constantly losing X-amount due to
19 practices that are consolidating, closing
20 down, going out of business, those types of
21 things. I would guess that's what it means.

22 Q. And over all of Healthy Advice's
23 Networks and including all replacement churn,
24 10,000 would actually be quite low for

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1 stating the number of practices that Healthy
2 Advice's screens had been in, right?

3 A. No, that's not true. Practices
4 are different than physicians because you
5 could have, you know, you might not have a
6 network with five or 6,000 physicians, but
7 only having, you know, 30-some thousand
8 physicians, 6,000 -- 5,000 practices, okay?

02:20

9 Q. But then you have more
10 physicians than that, or less?

11 A. No.

12 Q. Less?

13 A. Well, I don't understand the
14 question.

15 Q. Are there more doctors than
16 offices or more offices than doctor?

17 A. There are more doctors than
18 there are offices.

02:21

19 Q. So that's my mistake. In
20 considering all of Healthy Advice's digital
21 screens networks at the time, 10,000
22 physicians would have been quite low in terms
23 of describing how many physicians those
24 networks have been placed with?

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1 A. I don't know that it would be
2 quite low to say 10,000 physicians in digital
3 screens. But you have to understand, when I
4 used the term relative to physician
5 recruitment, we look across our enterprise
6 and our exam room program, and primary care
7 is actually -- now, I don't know if it is
8 today, but it was actually larger than the
9 network in digital screens primary care.

02:21 10 Q. The exam room program was big?

11 A. It was substantial, yes.

12 Q. At the time in 2011 and 2012,
13 ContextMedia did not have an exam room
14 program, correct?

15 MS. PARK: Objection, foundation.

16 A. I have no idea. Not to my
17 knowledge.

18 Q. You were not aware of an exam
19 room program being offered by ContextMedia?

02:22 20 A. I am not aware of the exam room
21 program.

22 Q. So when you received information
23 about ContextMedia supposedly going into
24 practices and impersonating Healthy Advice?

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1 A. Yes.

2 Q. That was in the context of
3 digital screen networks, right?

4 A. From my perspective --
5 MS. PARK: Objection, form.

6 Q. You weren't aware of that ever
7 being conveyed to you with respect to an exam
8 room program, right?

9 A. Correct.

02:22 10 Q. ContextMedia wasn't even
11 competing with Healthy Advice at the time in
12 exam room programs?

13 MS. PARK: Objection, form.

14 Q. Right?

15 A. To the best of my knowledge.

16 Q. The impact of ContextMedia's
17 marketing to practices at that time on
18 Healthy Advice's Network footprint was
19 limited, then, to digital screen networks,
02:23 20 right?

21 MS. PARK: Objection, form.

22 A. As to what I'm aware.

23 Q. J3, after talking to both
24 Healthy Advice and ContextMedia, told Healthy

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1 Advice that the practice of giving incentives
2 to healthcare providers in relation to
3 recruiting them into digital screen networks
4 could continue?

5 A. I don't know.

6 Q. Go ahead and review the rest of
7 the e-mail and see if it refreshes your
8 recollection.

9 A. Okay.

02:26 10 Q. Did you finish reviewing?

11 A. I got to the part where I think
12 I can answer your question, if I remember
13 what the question was. I vaguely.

14 Q. Did -- after J3 had communicated
15 with both ContextMedia and Healthy Advice --

16 A. Yes.

17 Q. -- about the incentives that
18 were given to providers to influence their
19 decisions about entering into a digital
02:26 20 screens network for ContextMedia, did J3
21 communicate to Healthy Advice that, as far as
22 J3 was concerned, the incentives could
23 continue?

24 A. That's not what I read here.

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1 Rather, it sounds to me like what they said
2 that ContextMedia gave them an explanation as
3 to why they were able to.

4 Q. And J3 wasn't going to take
5 action to stop it, correct?

6 A. I don't believe they were.

7 Q. They told you they weren't going
8 to take action to stop it, right?

9 A. I don't know that they said it
02:27 10 in those terms, but, you know, it states
11 here, if that's really what they're doing,
12 then they were going to be comfortable with
13 it. And if their explanation was accurate,
14 then they were going to accept that, is the
15 way I read it.

16 Q. Do you remember at the time
17 there being a concern that aggressive sales
18 techniques including multiple telemarketing
19 calls to the same healthcare provider were
02:27 20 contributing to an unwillingness by the
21 healthcare providers to listen and allow
22 opportunities when Healthy Advice salespeople
23 tried to offer them the ACN digital screens
24 program?

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1 A. I'm not sure how information was
2 necessarily conveyed. I do recall, because
3 that wasn't my main purview, so, you know,
4 you listen in on meetings when people are
5 giving an update to know a specific area, but
6 I do recall them saying that the practices
7 were complaining that they were just getting
8 bombarded over and over and over with the
9 same thing, and just -- yes, I do recall
02:28 10 that. But in what way the information was
11 being delivered, I don't know.

12 Q. When you say what way the
13 information was delivered, are you talking
14 about what methods of marketing to the
15 providers were being employed or the way the
16 information was being delivered to you about
17 that?

18 A. The way the information was
19 being delivered to the providers.

02:29 20 Q. So you're not sure if it was
21 telemarketing or in-person or faxes or
22 e-mails --

23 A. Or combinations of, I don't
24 know.

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1 Q. But you remember there was a
2 concern that, in a sense, a saturation of
3 marketing about digital screens was making it
4 more difficult than anticipated to expand the
5 footprint of the ACN?

6 A. Yes.

7 (Exhibit 99 identified.)

8 Q. I'm handing you a document that
9 we are marking as Defendant's Exhibit 99.

02:30 10 A. Thank you.

11 Q. I'd like you to go ahead and
12 review this one all the way through and let
13 me know when you're done.

14 A. Okay.

15 Q. Do you have any memory of this
16 e-mail or the events surrounding it?

02:31 17 A. Vaguely. I don't know that I've
18 ever seen this e-mail before, but I do
19 remember a concern from the sales executive
20 where -- and, again, I don't know how it
21 transpired how it was, but saying that
22 Humira's content was playing in the
23 ContextMedia and they had some concerns, I do
24 recall that.

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1 Q. Do you remember the outcome of
2 any -- whether there was a further
3 investigation about this?

4 A. I don't know.

5 Q. So you don't remember any
6 additional information coming in the door
7 either after --

8 A. I don't.

02:31

9 Q. It strikes me as bizarre, and I
10 just wonder if you remember anything about
11 comments at the time or explanations of
12 how -- of how or why an ad that was, you
13 know, that Humira was paying Healthy Advice
14 to put on the ACN?

15 A. Correct.

16 Q. Would be played on someone
17 else's screen?

02:32

18 A. I've never seen that happen
19 before either, and I don't know. And I did
20 not see it on the screen, I just heard.

21 Q. Did you ever hear this debunked
22 in any way?

23 MS. PARK: Objection, form.

24 A. I did not.

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1 Q. Do you remember any impact that
2 the Humira ad being played on this screen in
3 New York had on the business in any way?

4 A. No.

5 Q. Could you look at the third
6 e-mail down in the chain. It's on the second
7 page from Kim Coar, this page is marked --

8 A. Is this the same one we were
9 looking at?

02:33 10 Q. Yes. The page is marked
11 HAN00805.

12 A. Yes.

13 Q. This is an e-mail from Kim Coar,
14 dated October 11, 2011, right?

15 A. Yes.

16 Q. The to line lists Lee, Bruce.
17 Who is Lee, Bruce?

18 A. I believe -- I don't -- I
19 believe he is part of J3, I don't -- I don't
02:34 20 know him.

21 MS. PARK: I think his name is
22 Bruce Lee, Counsel, just to.

23 A. Oh.

24 Q. Thank you. Lee, Bruce?

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1 A. Yes.

2 Q. He's got an (NYC-JJJ) there, is
3 that --

4 A. Yes, I would think he's with J3.

5 Q. And Kim Coar is e-mailing him
6 and copying you and Mike McAllister, right?

7 A. Yes.

8 Q. About the relationship with J3?

9 A. Well, I'm reading, so I'm
02:34 10 checking. Okay. I'm sorry, what was your
11 question now?

12 Q. This e-mail is about the
13 relationship with J3?

14 MS. PARK: Objection, form,
15 foundation.

16 A. I'm not sure.

17 Q. Just at the practical level, I'm
18 trying to think, since you don't remember who
19 Bruce Lee was, but you think it's J3, can you
02:35 20 read this e-mail and confirm that he was at
21 J3?

22 A. Oh, yes, I can. I believe he's
23 at J3, absolutely.

24 Q. Kim Coar had responsibility for

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1 the account with -- of the client who was
2 advertising through J3 as an agency, right?

3 A. Again, I don't remember, but I
4 do not, to the best of my knowledge, no, I
5 don't think she had responsibility for J3. I
6 think she had a relationship with J3 before
7 when she had J&J.

8 Q. So sometimes, even though a
9 agency was not making decisions for a brand
02:36 10 that was in a particular salesperson's
11 territory, if that salesperson had a
12 relationship with someone at the agency, they
13 might step in and help out?

14 A. That would be correct.

15 Q. And that's the situation that
16 was happening here --

17 A. As I remember it correctly, and
18 I say, again, because timelines are a little
19 bit hard for me to remember three years back,
02:36 20 because she did at one time have J&J, and
21 when I gave you her a major clients
22 beforehand and I said Merck and Pfizer, I
23 believe at this particular point in time J&J
24 was no longer part of hers.

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1 Q. Are those relationships with
2 personnel at clients in marketing departments
3 and at marketing and advertising agencies
4 important in your business?

5 A. I believe they are.

6 Q. Do they contribute to the
7 success of the sales organization of Healthy
8 Advice?

9 MS. PARK: Objection, form.

02:37 10 A. I believe they do, but I don't
11 believe that's all of it. It's part of the
12 product, a part of a lot of different things
13 and brand needs.

14 Q. Let's break that down. So what
15 factors contribute to the success of Healthy
16 Advice's client sales organizations? We've
17 got relationships, we've got the product. And
18 when you say product, are you talking about
19 the --

02:37 20 A. I don't really mean product, I
21 mean the solution. How's that?

22 Q. The solution?

23 A. Yeah.

24 Q. Which would be a combination of,

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1 potentially, digital screen programs, exam
2 room programs, and then the other advertising
3 programs that the client might be interested
4 in?

5 A. True, yes.

6 Q. What other factors contribute to
7 the successful sales wing --

8 A. Result. And I'd probably put
9 that first.

02:38 10 Q. What's result?

11 A. For every dollar I spend, how
12 many do I get back? What's my return on
13 investment? I can have a great relationship
14 with you and you can have a product that I
15 like, but if it doesn't deliver money,
16 sayonara.

17 Q. And might I refer to that as
18 ROI?

19 A. Yes, you might.

02:38 20 Q. What's the difference between
21 that ROI and the solution?

22 A. I'm not sure I answered your
23 question -- or I understand your question.

24 Q. Well, you listed them as two

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1 factors.

2 A. Em-hm.

3 Q. Is there a part of the solution
4 that a client's going to be interested in
5 independently of straight up giving my dollar
6 figure ROI?

7 A. I'm not -- what do you mean?

8 Q. They're different?

02:38 9 A. The product is different than
10 the result, yes. But I'm not understanding
11 what you're asking me.

12 Q. What's different about them?

13 A. The one is how I'm conveying
14 their brand messages, etc., or education or
15 whatever it is I'm being asked to do, and the
16 other one is, did it move the needle on my
17 business.

02:39 18 Q. So the style of how the solution
19 is reaching patients is important
20 independently of the ROI hard data?

21 MS. PARK: Objection, form.

22 A. It's a contributor, but style
23 isn't all of it. It has to do not with only
24 the method in which something is delivered,

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1 i.e., whether it's print based, whether it's
2 digital, what's my content, do I have really
3 good creators who can change behaviors,
4 influence behaviors, etc.? It also has to do
5 with quality of the physicians recruited,
6 significantly so, in addition to your
7 content. They all play a very important
8 part.

02:40

9 Q. So subparts under the factor of
10 the solution are the product --

11 A. Em-hm.

12 Q. -- include the style in which
13 the marketing message is being conveyed, the
14 medium or media, the creditors who are behind
15 that, and whether those creators are the type
16 of people who can make stuff consistently
17 that changes behaviors and the quality of the
18 physicians within the network?

02:40

19 A. Yes. And I don't know if that's
20 exhaustive, but off the top of my head those
21 would be key elements.

22 Q. Are there -- and those are
23 factors that -- are those factors that the
24 clients are interested in?

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1 MS. PARK: Objection, foundation.

2 A. I think at the end of the day
3 they're interested in results. Really, they
4 are. And if you can show them how your
5 solutions will get those, then they'll like
6 your solution.

7 Q. We can, I guess, to a certain
8 extent, a client would be interested in the
9 solution if there was something
02:41 10 counterproductive or additionally productive
11 in the solution that wouldn't necessarily
12 come out in a hard data ROI study such as,
13 for example, if while the advertising on the
14 digital network in terms of hard data created
15 more prescriptions?

16 A. Yeah.

17 Q. And more dollar value, there was
18 something about the solution that was
19 distasteful so that they would be
02:42 20 anticipating, and in the long run, it might
21 damaged the brand?

22 MS. PARK: Objection, form.

23 A. No, I -- well, I can't imagine
24 what would be distasteful to someone, I mean.

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1 Q. Or what if the solution was
2 really cool and independent of the hard data
3 of the ROI, they anticipated that, in the
4 long run, this partnership with this
5 particular solution was going to be good for
6 the brand, would that be -- would the client
7 be interested in that?

8 A. Let me ask you, I want to make
9 sure I understand what you're asking me. I
02:42 10 don't necessarily think it's going to create
11 the ROI I'm looking for, but I think this is
12 a really cool solution. Would I be inclined
13 to utilize that, is that the question?

14 Q. Yeah.

15 A. No, I would not say that. And
16 the reason that I wouldn't say that is
17 because the brand manager's job is a
18 revolving door, they're in and out, they've
19 got X-amount of time to make a decision and
02:43 20 your next job, your promotion is based upon
21 what did I deliver. They're keenly focused
22 on that.

23 Q. What if the ROI is generally
24 within the same range as a competitor, but

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1 the competitor has a slightly higher ROI,
2 could the nature of the solution impact the
3 decision that the client makes?

4 A. Oh, I think probably for sure,
5 but so can, you know, the relationship that I
6 have and the history and all kinds of other
7 things. There's not one single thing in my
8 almost 37 years experience in sales, it's a
9 variety of different things that contribute.

02:43 10 Q. And so far we've talked about
11 relationship, solution, ROI, and I think you
12 mentioned history?

13 A. Em-hm.

14 Q. What's history independent of
15 relationships?

16 A. Has a company utilized a
17 solution for a really long time and
18 consistently brand over brand, year over
19 year. It's a company that delivers, it's a
02:44 20 company that services their account, it's a
21 company that respects, it's a company with
22 ethics, honor, integrity, all those things.

23 Q. Consistency, service, ethics and
24 reputation?

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1 A. Yes, and a proven ability to
2 deliver.

3 Q. Can you think of other factors
4 that influence client decisions in this
5 industry?

6 A. I'm sure there are others, but,
7 as I said, those are things -- I do this, you
8 know, I'm in sales, those are the big things
9 that come to mind.

02:44 10 Q. Now, ROI isn't always going to
11 be important to every client, right?

12 A. No.

13 Q. So sometimes that's not even a
14 factor?

15 A. In the first year launch,
16 you're -- nothing pays out for anybody, not
17 TV, not anything, because you've got such an
18 investment in it and you have to grow your
19 brand, but other than that, yes.

02:45 20 Q. So that the stage, the market
21 stage, can influence how important one factor
22 is over another in the client's decision
23 making?

24 A. Just in launch, yes. After

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1 that, you've got to pay out.

2 Q. After that every client is going
3 to be interested in ROI?

4 A. I have not met one to date that
5 hadn't been.

6 Q. But the degree to which the
7 other factors play into the decision making
8 would change with respect to each client
9 potentially, right?

02:45 10 A. Yes, I would think so.

11 Q. And even each contract for the
12 same client, right?

13 A. Potentially.

14 Q. Is there any way to generalize
15 about how important relationships, solution,
16 ROI and history are relative to one another?

02:46 17 A. I don't -- I mean, I can't do
18 it, maybe there is somebody who can, because,
19 as I said, ROI is always a big deal. Some
20 people who may be new to an organization that
21 has a long-term relationship, it may not be
22 as relevant to that, it's each -- I couldn't
23 really say.

24 Q. And the client decisions that

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1 these things are implementing ultimately
2 impact the bottom line of the business,
3 right?

4 A. Are you asking bottom line of
5 the client's business?

6 Q. I'm talking about Healthy
7 Advice's business.

8 A. Certainly.

9 Q. Or its competitors' business?

02:46 10 A. I would guess, yes.

11 Q. Within the industry?

12 A. I would guess.

13 Q. These factors would be the same
14 for a competitor as they would for
15 PatientPoint, right?

16 A. I would assume so, but I don't
17 know, I don't -- I never worked for any of
18 them.

19 MS. PARK: Objection.

02:46 20 Q. Well, you've had 20 -- 37 years
21 experience in the healthcare --

22 A. No, not healthcare.

23 Q. Not in healthcare --

24 A. Sales.

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1 Q. In sales. Is there some reason
2 that you're hesitant to say that these
3 factors are the same for a competitor?

4 A. No, but I'm giving you my
5 opinion, what I know, what I'm aware and
6 somebody else might say something totally
7 different.

8 Q. Your opinion is that --

9 A. Correct.

02:47 10 Q. -- these factors would be a --
11 would be the same for a competitor of
12 PatientPoint?

13 A. I would think.

14 Q. And ultimately they -- because
15 they influence client decisions, they have an
16 impact on revenue for PatientPoint?

17 A. Sure, yes.

18 Q. And that can be through
19 decisions that the clients make whether to
02:47 20 purchase a contract and also the price that
21 they pay for each contract, correct?

22 A. Yes.

23 MS. PARK: Tom, we've been going
24 about an hour and a half, can we take a quick

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1 break?

2 MR. HANKINSON: Sure.

3 MR. McCRACKEN: We're going off
4 the video record at 2:46 p.m.

5 (Break taken.)

6 MR. McCKRACKEN: We're back on
7 the video record at 2:56 p.m.

8 Q. Do you remember an Alexis
9 Schnell who worked at Healthy Advice?

02:57 10 A. Yes, I do.

11 Q. Is that you or a relation?

12 A. No, it's my daughter.

13 Q. Oh, okay. Was she on the sales
14 team?

15 A. Yes, she was.

16 Q. What was her role?

17 A. Which month? I say that, they
18 changed it a lot, so when do you want to
19 know?

02:57 20 Q. 2012, beginning of the year.

21 A. Again, you're going to have to
22 check, but I believe that was around the time
23 they moved her as a junior partner on the
24 Chicago business, Takeda and Abbott, so I

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1 believe that's about the time, but you'd have
2 to check that.

3 Q. Is junior partner a position
4 that works with the person who has primary
5 responsibility for a territory?

6 A. Yes, that's correct.

7 (Exhibit 93 identified.)

8 Q. I'm going to hand you what's
9 been previously marked as Defendant's

02:58 10 Exhibit 93. If you would like, you can glance
11 it over to become familiar with the date and
12 time frame. I can tell you, I'll be asking
13 you about the second e-mail in the chain that
14 goes from the first page to the second page.
15 So let me know when you're ready to proceed.

16 A. May I ask a question?

17 Q. Yes.

18 A. Is this -- because I don't want
19 to waste everybody's time. Is this response

03:01 20 from Jamie the same one that was attached to
21 a previous e-mail or should I read the entire
22 response?

23 Q. I would have to check. I'm not
24 going to ask you about that portion.

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1 A. Oh, okay, then that's fine if
2 you're not.

3 Q. But you should look it over to
4 the extent that would make you feel
5 comfortable answering questions about the
6 second e-mail in the chain. And let me know
7 when you're done. Yes, it is the same e-mail
8 that was part of a prior e-mail chain that we
9 discussed.

03:02 10 A. Well, may I ask a question then?

11 Q. Yes.

12 A. Because I guess I'm not
13 following. In this context and it certainly
14 wasn't in the previous one, as they talk
15 about the fact that they have a CD, but it
16 doesn't include any of the client sponsor, it
17 then says, "This is not true, we have copies
18 of their sales collateral including a CD that
19 they," oh, Jill Brewer put that in. I'm
03:03 20 sorry. She's interspersed her comments,
21 okay. My apologies.

22 Q. There you go. Yes, it says {JB}
23 in brackets as she's inserting things, so I
24 guess it was the same e-mail, but there were

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1 some insertions from Jill Brewer in this.

2 A. Okay, just -- okay, I got it.

3 Got it, okay.

4 Q. Looking at the e-mail from Jill

5 Brewer starting on the first page of this

6 document and going to the second page.

7 A. Yes.

8 Q. The date of that e-mail is

9 October 28, 2011, right?

03:03 10 A. Yes, it is.

11 Q. And you are one of the

12 recipients?

13 A. Yes, that is correct.

14 Q. I'd like to direct your

15 attention to the third paragraph of the

16 e-mail, the second paragraph on page

17 HAN000768.

18 A. Em-hm.

03:04 19 Q. Ms. Brewer says, "With regard to

20 churn, what we've heard is that many offices

21 are just trying something new or that there

22 is a new manager so they don't know us or the

23 product well. Unfortunately, because this

24 market is so small (SKA reports around 4,000

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1 Rheums with only 2,700 docs being
2 office-based or our audience) they have
3 hounded these rheums to death via
4 telemarketing. Honestly, they call
5 repeatedly month over month, even after
6 they've been told no. What this means is, to
7 us is that as we work to replace our losses,
8 we are running into the crap they've left at
9 the front door." Do you see that part of this
03:05 10 e-mail?

11 A. Yes, I do.

12 Q. Do you remember around the fall
13 of 2011 the concern that aggressive and
14 repeated marketing to practices was slowing
15 down the growth of ACN?

16 A. I already answered that earlier.

17 Q. What was the answer? Remind me.

18 A. She's got it.

19 Q. Yes, was it more complicated
03:05 20 than that?

21 A. No.

22 Q. So the answer was yes?

23 A. Yes.

24 Q. Does reviewing this e-mail

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1 refresh your independent recollection at all
2 of the nature of the marketing activities?

3 A. No.

4 Q. At the time, did PatientPoint
5 rely on Ms. Brewer and her team to provide
6 its best information about what was happening
7 in the marketing of digital screen networks
8 to providers?

9 A. Yes, I believe that is correct.

03:06 10 Q. Do you think it was reasonable
11 to rely on her and her team to make business
12 decisions?

13 MS. PARK: Objection, form.

14 A. She didn't report to me, so I
15 don't know if she made all the decisions. I
16 do know that, you know, people make
17 recommendations, as you can see through some
18 of this e-mail document, as well as the fact
19 that, in my opinion, they were the frontline,
03:06 20 out in the -- in the practices to know what
21 was going on better than others.

22 Q. The phenomenon of what she calls
23 death via telemarketing, but might be
24 referred to as the over marketing or market

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1 saturation of providers, that phenomenon is
2 an independent factor even over above
3 incentives and over and above any
4 impersonation of Healthy Advice in the
5 difficulty that Healthy Advice was
6 encountering in expanding ACN, right?

7 MS. PARK: Objection, form.

8 A. I believe that, yes, she has --
9 what's the word I'm looking for? Expressed
03:07 10 that this was a factor, but I think, much
11 like the sales to the clients for money, it
12 is not one thing, it is the combination of
13 all those things that will exacerbate a
14 situation and define the outcome.

15 Q. So each of those things that I
16 listed is a factor?

17 A. As it has been brought to my
18 attention. I don't deal with it, but.

19 Q. And are you aware of a way to
03:08 20 rank or compare how important each of those
21 factors is?

22 A. I don't think I'm in a position
23 to do that.

24 (Exhibit 95 identified.)

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1 Q. I'm handing you what has been
2 previously marked as Defendant's Exhibit 95.
3 This is one where I think it would make sense
4 for you to review the whole e-mail chain and
5 then let me know when you're ready to
6 proceed.

7 MR. McCKRACKEN: While she's
8 reviewing, I'm going to change discs.

9 MR. HANKINSON: Is that okay with
03:09 10 you?

11 MS. PARK: That's fine.

12 MR. McCKRACKEN: Going off the
13 video record at 3:08 p.m.

14 (Break taken.)

15 MR. McCKRACKEN: Okay. We are
16 back on the video record at 3:10 p.m.,
17 starting with DVD disc No. 2.

18 Q. Are you ready to proceed in
19 talking about Defendant's Exhibit 95?

03:11 20 A. Yes.

21 Q. In this e-mail chain, personnel
22 on the side of Healthy Advice's business that
23 deals with providers report up the chain
24 about \$100 AmEx cards given as an incentive

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1 to a practice, correct?

2 A. Yes.

3 Q. Was the concern that these types
4 of incentives would be a major factor in some
5 provider's decisions about whether to switch
6 from a Healthy Advice screen to a
7 ContextMedia screen?

8 A. I believe so.

9 Q. And, in fact, the note here --
03:12 10 are you familiar with CMS at Healthy Advice?
11 Customer Management System?

12 A. Oh, yes. I was saying I know
13 that, yes.

14 Q. Does the note at the bottom of
15 this e-mail chain look like a CMS entry
16 that's been embedded in the e-mail? You
17 haven't --

18 A. No, I didn't. I have no idea.

19 Q. In any event, Amy Petrik is
03:12 20 reporting to Amy Finley and others about this
21 incentive, correct?

22 A. That is correct.

23 Q. And it says that this point of
24 contact explained that, "she made the

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1 decision to switch to RHN because they
2 offered her a \$100 AmEx card, other than
3 that, she didn't really care about content,
4 etc., provided she didn't have to pay and
5 arrange anything, she was fine with switching
6 strictly because of \$100 gift card." Did I
7 read that correctly?

8 A. I think you did.

9 Q. Does that refresh at all your
03:12 10 independent recollection of what types of
11 incentives were being offered by
12 ContextMedia?

13 A. No, as I mentioned earlier, I
14 was not involved in the day-to-day side of
15 that business. I do recall, as I said, there
16 were gift cards, other times I heard of, you
17 know, maybe dinners -- or not dinner, but
18 food or lunch, I don't know.

19 Q. You do remember that there were
03:13 20 gift cards at some point?

21 A. I do.

22 Q. And you actually are on an
23 e-mail further up this chain?

24 A. Yes, I am.

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1 Q. Does this refresh your
2 independent recollection at all of whether
3 the incentives were considered to be a factor
4 that, in and of themselves, might drive the
5 decisions of some practices to switch from
6 Healthy Advice to ContextMedia?

7 A. Yes.

8 Q. And what do you remember about
9 that?

03:13 10 A. What it says here, the office
11 said, I would have stayed, I wasn't going to
12 make a switch, but for \$100, I'm going.

13 Q. Do you remember that it being a
14 more general concern at the time at Healthy
15 Advice, apart from this one particular
16 office?

17 A. Do I -- I was not nodding that I
18 understood where you were going, but I'm not
19 sure now where you went. What's your -- what
03:14 20 are you asking me is, basically, what I'm
21 saying.

22 Q. Well, you're saying that this
23 refreshed your independent recollection, and
24 you pointed to the comment about this

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1 particular practice?

2 A. Right.

3 Q. And I'm asking, do you remember
4 it being a more general concern over and
5 above just one practice?

6 A. Yes, I do.

7 Q. A significant enough concern --
8 let me start that again.

9 If we look further up this

03:14 10 e-mail chain, Ms. Ruschau says, "Can we ask
11 Neil his perspective and report them or sue
12 them??" Do you see that?

13 A. I do.

14 Q. And she sends that e-mail to
15 Mike McAllister and you, right?

16 A. Yes.

17 Q. You answer that e-mail, correct?

18 A. I did.

19 Q. About 12 minutes later?

03:15 20 A. Okay.

21 Q. Yes?

22 A. Yes.

23 Q. And you say, "What they are
24 doing is not 'illegal' --"

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1 A. Not quote/unquote.

2 Q. "Not 'illegal' according to the
3 court of law, only the Pharma code
4 guidelines, and FDA." When you refer to what
5 they are doing, are you referring to
6 ContextMedia?

7 A. Yes, I am.

8 Q. And when you refer to the PhRMA
9 code guidelines, is that --

03:15 10 A. PhRMA.

11 Q. PhRMA?

12 A. (Witness nods head
13 affirmatively.)

14 Q. Do you remember what, if
15 anything, you meant separately about the FDA
16 here?

17 A. To the best of my recollection,
18 they are -- according to the FDA, they're not
19 allowed to, again, incent, give things to
03:16 20 practices.

21 Q. Is the basis of your
22 interpretation of those guidelines that
23 direct incentives to physicians or their
24 offices are not permissible under those

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1 guidelines in marketing pharmaceuticals?

2 A. In anything to the practices is
3 my understanding, whether it's a -- an iPad,
4 things like that, you can't give them things.

5 Q. Was your understanding at the
6 time?

7 A. Yes. It still is.

8 Q. You go on in your e-mail to say,
9 "I have asked Kim to contact J3 and inform
03:17 10 them that out of respect for them will are
11 giving them notice that if they do not have
12 ContextMedia --"

13 A. Excuse me, it should be we.
14 Obviously, I have a typo.

15 Q. I was going to get to that. I
16 just didn't want to misread it.

17 A. I apologize for interrupting.

18 Q. No, no, that's fine. "I have
19 asked Kim to contact J3 and inform them that
03:17 20 out of respect for them we are giving them
21 notice that if they do not have ContextMedia
22 cease and desist, we are going directly to
23 the president of Centicor, reporting the
24 ethics violation." Who was the president of

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1 Centicor?

2 A. I don't know.

3 Q. But what is that title, what's
4 Centicor?

5 A. Centicor is the division of J&J
6 that was contracted through J3 to have
7 ContextMedia build this network for them.

8 Q. Healthy Advice?

03:17

9 A. No, to have ContextMedia build
10 RHN, is that what they call it?

11 Q. Oh, okay. And how did you know
12 that?

13 A. To the best of my recollection,
14 they actually came to Healthy Advice first.
15 J3 was contacted as an agency by Centicor for
16 Simponi, because they wanted to build a
17 network. They actually, based on their
18 experience with us, our delivering results,
19 our ethics, our integrity and they way we
03:18 20 work as a company, they approached us to
21 build the network for them, we turned it
22 down. We said that the network, that the
23 size, the scope, we already had a proprietary
24 network for a competitor and that, basically,

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1 we would be cannibalizing, because their
2 space simply wasn't big enough to deliver and
3 we turned it down.

4 Q. Rheumatology?

5 A. Yes. So that's how we knew,
6 because they had gone to -- this is, again,
7 according to my recollection, I don't get
8 involved everyday on all the calls, but Kim
9 Coar worked for me, and she had had J&J

03:18 10 before, I told you, she did not, to the best
11 of my knowledge, at this time, but they went
12 to her and she came to us, and we said no we
13 cannot do this, okay? So that's how I knew.

14 Q. Do you remember reporting about
15 these activities to the president of
16 Centicor?

17 A. Yes, I remember. I did not.

18 Q. Why not?

19 A. At the end of the day and,
03:19 20 again, this is best of my recollection,
21 because you're trying to remember where you
22 are at that moment in time. We actually --
23 when you say, you know, when you call your
24 bluff in cards or something, but I don't know

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1 that I was really going to go, but we
2 thought, if we said that, we could get some
3 action, but at the end of the day, I did not
4 go.

5 Q. So the plan was Kim Coar would
6 say this to J3, that if they didn't do
7 something about it, Healthy Advice would talk
8 to the president of Centicor, and the idea
9 was that J3 would then do something about it.

03:19 10 When J3 didn't do something about it, no one
11 at Healthy Advice actually went to the
12 president of Centicor?

13 A. That would be correct. That
14 would be correct. Now, when I said that would
15 be correct, it is correct that no one went.
16 I am not sure what conversation Kim had with
17 J3, whether she said we were going to, I
18 don't know whether she said that to them.

19 Q. You asked her to though?

03:20 20 A. No, I did not ask her to, I
21 told -- that's what I said we would do, but I
22 didn't say specifically tell them we will do
23 this. I mean, she had a good enough
24 relationship --

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1 Q. So this e-mail is inaccurate?

2 A. No, it is accurate. I said we
3 will do, you know, what did I -- tell them,
4 you know, out of respect, okay? Yeah, I
5 don't know that she actually did that,
6 though, I guess is what I'm saying. Let me
7 go back and refresh. She may have said that
8 to them. I don't know if she did or if she
9 said, based on her relationship, that she
03:20 10 said, hey, look, we've got some things going
11 on relative to, whatever, can you speak with
12 us. But I was -- didn't -- I was not privy
13 to the actual conversation and how she got
14 the meeting.

15 Q. At the time of October 11,
16 2011 --

17 A. Yes.

18 Q. -- you had asked Kim to say that
19 to J3?

03:21 20 A. Yes.

21 Q. She reported to you, correct?

22 A. Yes, she did.

23 Q. And then, above that, Mike
24 McAllister e-mails Amy Finley and Jill Brewer

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1 and says, "As info - I will need some names
2 for J3 - this got their attention." Do you
3 see that?

4 A. I do.

5 Q. Does that in any way refresh
6 your independent recollection of whether this
7 message that you had asked Kim to convey to
8 J3 had actually been conveyed?

9 A. No. Again, I have no idea if
03:21 10 she stated it that way. I do know that, as a
11 result of her calling them, I did have a call
12 with them.

13 Q. And what was the contents of
14 that call?

15 A. Basically, I thanked them for
16 their time, I told them that we've worked
17 together for quite a while and I was calling
18 them out of respect, that they had a great
19 reputation in the industry as well and that
03:22 20 they were contracted with by a company to
21 deliver X, and as a result, anything that was
22 improper would be a reflection on them,
23 and I gave them some examples of some things
24 that we had noticed through our practices and

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1 I said -- I do remember saying, I could have
2 gone directly to their president, I said, but
3 I didn't, I came to you, and they thanked me
4 very much for that, and they said we will
5 look into it, I said thank you. That was it.

6 Q. Was your intent to influence
7 J3's behavior?

8 A. No.

9 (Exhibit 94 identified.)

03:22 10 Q. I'd like to hand you what's been
11 previously marked as Defendant's Exhibit 94.
12 This is a different e-mail chain, so I think
13 you should take whatever time you need to
14 become familiar with it --

15 A. Okay.

16 Q. -- and then let me know when
17 you're ready.

18 A. Thank you. Okay.

03:24 19 Q. In the e-mail chain that is
20 Defendant's Exhibit 94, a different comment,
21 this one from Phyllis Timole, is reported to
22 Kelly Schulkers and Amanda Devlin about an
23 incentive given to a practice to convince the
24 practice to go with ContextMedia's digital

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1 screen network instead of Healthy Advice's,
2 correct?

3 A. Yes.

4 Q. Amy Finley forwards it to Mike
5 McAllister, and then Mike McAllister forwards
6 it to you, right?

7 A. Going back trying to -- yes.

8 Q. And then you forward it to Kim
9 Coar, and say to her, "ContextMedia offered
03:25 10 another American Express card. They said, if
11 we offered the same thing, they would stay
12 with us. Feel free to send to J3," right?

13 A. Yes.

14 Q. So this is an independent
15 incident that you are reporting to Kim Coar
16 and saying, feel free to send it to J3,
17 right?

18 A. Correct.

19 Q. But it's the same phenomenon of
03:26 20 giving an incentive card directly to a
21 practice?

22 A. That is correct.

23 Q. Then Kim Coar forwards the
24 e-mail to Jamie Kozma and Eric Solomon who

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1 are personnel at J3, correct?

2 A. Okay. Let me follow here. I
3 just want to make sure I have the right --
4 yes.

5 Q. And she says -- and you're
6 copied on this e-mail, right?

7 A. Yes.

8 Q. And she says, "Hi Jamie, FYI,
9 here is another example, Kim," correct?

03:26 10 A. Yes.

11 Q. Does this refresh your
12 independent recollection that, not only this
13 incident, but another incident was, in fact,
14 reported to J3?

15 A. Yes.

16 Q. And it was?

17 A. Well, as I said, when you -- let
18 me clarify, when you asked does this refresh.
19 I don't remember, but I'm looking at it here
03:27 20 and it appears as though, yes.

21 Q. You can't think of another
22 explanation for this e-mail other --

23 A. No, I can't.

24 Q. -- than that? Then later that

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1 morning Jamie Kozma from J3 responds to Kim
2 Coar and copies Eric Solomon at J3 and you --

3 A. Yes.

4 Q. -- at Healthy Advice, correct?

5 A. That is correct.

6 Q. And he says -- informs you that
7 J3 actually sat down with ContextMedia to
8 discuss this issue, correct?

9 A. That is correct.

03:27 10 Q. Then Kim Coar sends Jamie
11 Kozma's e-mail to Linda Ruschau and Mike
12 McAllister and copies you, right?

13 A. Em-hm. Yes.

14 Q. She just says, "Interesting"?

15 A. Yes, that's correct.

16 Q. And the -- you know, the outcome
17 of the conversation with Jamie Kozma was that
18 J3 wasn't going to intercede in this
19 situation, right?

03:28 20 A. I think that is correct.

21 Q. So Kim calls that interesting
22 and then Linda Ruschau e-mails back and says,
23 "So what is the truth?" Do you see that?

24 A. I do.

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1 Q. And you were copied on that
2 e-mail?

3 A. Yes.

4 Q. The next e-mail is a reply from
5 Kim Coar back to Linda's question, copying
6 you and Mike McAllister, and Kim Coar says,
7 "Sounds like they found a loophole to me."
8 Do you see that?

9 A. I do.

03:29 10 Q. If you had a different opinion
11 from Kim Coar, who was your subordinate at
12 this time, would you have expressed that in
13 this e-mail chain?

14 A. No, not necessarily.

15 Q. Would you have followed up in
16 some way or just let this stand?

17 A. I don't know. I don't -- I
18 believe, but I can't -- I believe I had
19 conversations with them.

03:29 20 Q. With whom?

21 A. Kim. And potentially Linda, I
22 don't recall.

23 Q. But you don't remember?

24 A. Not 100 percent, but I believe I

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1 did.

2 Q. Were those conversations similar
3 to your response in a different e-mail chain
4 about it not being illegal in a court of law
5 but that the pharmaceutical guidelines had
6 something to say about it?

7 MS. PARK: Objection, form.

8 Q. Or a different conversation?

9 MS. PARK: Same objection.

03:30 10 A. The -- we are hired, as I said,
11 by clients, and so when you represent them,
12 you have to abide by those rules, that's what
13 I said, to the best of my recollection.

14 Q. Do you remember giving any
15 response to the theory that there was a
16 loophole?

17 A. No, I don't.

18 Q. You don't know if you agreed
19 that there was a loophole, disagreed that
03:30 20 there was a loophole or just didn't comment?

21 A. That would be correct. I -- as
22 I'm looking at it here, because I don't
23 remember. I know I don't agree.

24 Q. So today you don't agree?

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1 A. Right.

2 Q. You don't remember if you had a
3 conversation with anyone at the time --

4 A. No, I don't remember seeing
5 this, but, obviously, I did. It's one of my
6 e-mails, but I see lots of them and sometimes
7 you get one, and salespeople just talk
8 amongst themselves a lot, they're not going
9 to make decisions. But as I said, I don't
03:31 10 recall 100 percent, but I do believe I spoke
11 and said, no, we wouldn't do that, here's why
12 you don't do that ethically, you represent,
13 you have to live by their standards of the
14 client you represent.

15 Q. If it wasn't unethical, then
16 would you agree with the suggestion that
17 Healthy Advice should do it too?

18 MS. PARK: Objection, form.

19 A. I don't know, I have no idea of
03:31 20 knowing. I mean, if I didn't have to pay my
21 people money to take my stuff, why would I?
22 That would be dumb business, so I have no
23 idea whether I would or would not have if it
24 wasn't unethical.

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Deborah Schnell, 3/28/2014

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1 Q. Because there might not be a
2 need on Healthy Advice's part to use direct
3 incentives to compete?

4 A. Your product's your incentive,
5 your service is your incentive to those
6 practices, your service.

7 Q. So the answer to my question is
8 yes?

9 A. Yes what?

03:32 10 Q. Well, I asked, I think, if I'm
11 remembering it right, that you wouldn't
12 necessarily agree with the suggestion that
13 Healthy Advice do the same thing, give direct
14 incentives, even if it were ethical?

15 A. That would be correct.

16 Q. The reason is, Healthy Advice
17 may not need to because it has other sales
18 points?

19 A. That's correct.

03:32 20 Q. If a competitor needs to in
21 order to recruit or retain practices, then
22 that would be a separate issue?

23 MS. PARK: Objection, form,
24 vague.

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1 A. This is a situation where they
2 are building out a network for a specific
3 client, one client, and I don't believe it's
4 ethical.

5 Q. And not what?

6 A. It's not ethical. They have to
7 live by the guidelines of that sole
8 manufacturer that they represent because they
9 were building it for them, so, no.

03:32 10 Q. And the reason behind those
11 ethics is precisely because, in your opinion,
12 it would influence, potentially, doctors'
13 decisions in terms of the prescriptions that
14 they wrote? Isn't that the reason for these
15 ethical guidelines?

16 MS. PARK: Objection, form --

17 A. That is, I believe, I'm not part
18 of the PhRMA code, but I believe that is, you
19 know, the premise for it. In this case,
03:33 20 however, they are not incenting them to write
21 prescriptions, they're incenting them to take
22 their particular product, which will house
23 only that client's information.

24 Q. The idea being, then, because

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1 incentives can be effective in influencing
2 the practices at doctors' offices, that's why
3 there are guidelines about whether or not
4 they can be used, right?

5 A. I believe that's true. Again,
6 I'm not part of the PhRMA code -- or PhRMA
7 ethics committee, but all the PhRMA companies
8 signed it.

03:33

9 Q. What is your -- in 2011 to 2012,
10 could you describe for me your prior work
11 history in the industry or in any related
12 aspect of sales?

13 A. From when to when?

14 Q. From the time that you began any
15 sales experience that you would consider
16 relevant to PatientPoint's Healthy Advice's
17 business up through 2011 to 2012.

03:34

18 A. Well, I want to make sure I get
19 it right, so. In January of 1996 was my first
20 move into the healthcare space specifically.
21 I had -- well, I worked for IBM for almost 20
22 years, and I had a short stint in hospitals
23 selling hardware, but most of it was
24 technology in lots of different industrial

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1 verticals, but in January 1996 I made a full
2 jump over into the healthcare space. And so,
3 there you go, until Healthy Advice.

4 Q. And in 1996, was that at Healthy
5 Advice?

6 A. No, I worked for a company that
7 was On Target Media, and they were launching
8 a brand-new start up called ProtoCall.

9 Q. What did ProtoCall do?

03:35 10 A. We provided a different type, a
11 niche type of contract sale service to the
12 PhRMA industry. It was really much more
13 along the sampling line than actually full
14 detail.

15 Q. And I apologize, I didn't
16 understand that.

17 A. Pharmaceutical reps that go in
18 and have to fully detail a product to
19 understand the biokinetics and everything
03:35 20 about it and patient profiles and stuff.
21 This was a different niche, so that we could
22 take mature products where they'd already
23 established the relevance of the product and
24 what it was for and how doctors -- for

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1 example, nobody knew what Lipitor is for, so
2 why pay for a high price person? These
3 people will go in, say the brand name, make
4 it top of line, drop off samples for you,
5 okay?

6 Q. It's a marketing protocol --

7 A. It's promoting brand drugs for
8 pharmaceutical companies. They would hire us
9 rather than hire incremental salespeople.

03:36 10 Q. And promoting them directly to
11 doctors' offices?

12 A. Correct.

13 Q. So it's relevant experience as
14 you bridged into your role at Healthy Advice?

15 A. Sure.

16 Q. And was ProtoCall a separate
17 company or just part of target media -- On
18 Target Media?

03:36 19 A. You know, you'd have to go back
20 and look at the structure. I don't really
21 remember exactly how we structured
22 everything. When I started there, I had
23 equity on the other side, and then I said, I
24 don't want it any more, I'll just take it all

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1 in ProtoCall, because that's where I was
2 spending 100 percent of my time.

3 Q. Had some sort of separate stock
4 incentive program?

5 A. I don't even know if they issued
6 stock. It was so long ago.

7 Q. When you say equity, though,
8 this was some kind of bonus program?

9 A. If the company was sold.

03:36 10 Q. And when did you leave
11 ProtoCall?

12 A. We sold the company to a
13 publicly traded company, which I mentioned to
14 you before, PDI. I continued on as president
15 of ProtoCall for, again, I can't tell you how
16 long, I don't remember the dates. If I had
17 my resumé here I could, but, and then at some
18 point along the line, the folks at PDI asked
19 me to make the move to the east coast and
03:37 20 head up all of their business development
21 efforts, which I did.

22 Q. What was the business of PDI?

23 A. Contract sales to the
24 pharmaceutical industry.

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1 Q. Same industry as ProtoCall which
2 it had acquired?

3 A. Yes.

4 Q. And did you work continuously
5 from 1996 through the time that you -- that
6 ProtoCall was sold to PDI?

7 A. Yes.

8 Q. And what was your next position
9 after you worked for PDI?

03:38 10 A. I worked at PDI till February of
11 2005 or '06. And then in May of whatever year
12 that was, '05 or '06, I started with Healthy
13 Advice.

14 Q. So apart from five or
15 six months, you worked continuously from 1996
16 to the time that you joined Healthy Advice?

17 A. Correct.

18 Q. In the industry of marketing to
19 doctors' offices? Or how would you describe
03:38 20 it?

21 A. Well, they are really two
22 different -- we look at them as two different
23 fields for whatever. So one is professional
24 marketing when you're calling on doctors, the

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1 other one is direct to the consumer because
2 that's who you're trying to reach.

3 Q. Was PDI direct to consumer?

4 A. No. Healthy Advice was direct
5 to consumer, or PatientPoint.

6 Q. I see. But the program still
7 needed to be marketed on behalf of the
8 company itself to the doctors' offices?

9 A. That would be correct. That's
03:39 10 what Jill's group did.

11 Q. And so that experience in the
12 professional -- did you call it professional
13 marketing?

14 A. Yes.

15 Q. In the professional marketing
16 industry gave you insight and experience in
17 understanding that part of PatientPoint's
18 business, even though you were on the client
19 side, correct?

03:39 20 A. Somewhat, yes. I would believe
21 that's true.

22 Q. I mean, you had almost 20 years
23 of experience marketing --

24 A. No.

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1 Q. No?

2 A. If you go from '96.

3 Q. Ten years, almost ten years
4 experience --

5 A. That's okay. I like your math
6 though.

7 Q. Not my strong suit.

8 A. Mine either.

9 Q. But in any sense, you had almost
03:40 10 a decade of experience in professional
11 marketing in, specifically, the field of
12 marketing to doctors' offices before you
13 joined Healthy Advice?

14 A. Yes and no. The reason I say
15 that, I wasn't one whoever went out to the
16 offices, I didn't call on the practices.
17 Again, I called on the professional -- the
18 different people in marketing in PhRMA,
19 people who control the direct to consumer
03:40 20 advertising budgets, and they come out of two
21 separate buckets, so even the context that
22 you have are very different when you switch
23 over. So the people that worked under me
24 managed the teams that were out in the field

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1 calling on the offices. I did not go out to
2 the offices.

3 Q. But you were an executive --

4 A. Yes.

5 Q. -- for that whole ten years?

6 A. Yes. That would be true.

7 Q. And those people who went out to
8 the offices reported to you?

9 A. Indirectly.

03:40 10 Q. And I assume you gained valuable
11 insight during that time?

12 A. I think so.

13 Q. And you applied that insight as
14 you progressed in your career?

15 A. Hopefully.

16 Q. So then you started work at
17 Healthy Advice either in 2005 or 2006, did
18 you work there continuously through 2012?

03:41 19 A. '12, I did. I was there for
20 seven years, so you can back into it if you
21 want, if your math is better than mine, if I
22 try to count backwards.

23 Q. And during that time you gained
24 even more experience being an executive, this

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1 time in the industry of direct to consumer
2 marketing of pharmaceuticals?

3 A. Yes.

4 Q. When you were making business
5 decisions at Healthy Advice, you were
6 applying that experience, correct?

7 A. I would guess. I don't know
8 what the circumstances are -- were. I think
9 that, as you grow through business, you use
03:41 10 your personal life, you use things from IBM,
11 you use -- hopefully people use all kinds of
12 things to make good business decisions.

13 Q. And you had very significant
14 experience at that point?

15 A. I think so.

16 Q. Earlier we discussed the concern
17 that Healthy Advice had about a piece of
18 equipment being shipped to ContextMedia, do
19 you remember that?

03:42 20 A. I do.

21 Q. Your impression at that time was
22 that it was important to keep the information
23 on that piece of equipment secret inside the
24 company, correct?

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1 A. That's what I was told. That's
2 what the executives who were responsible for
3 that area of the business believed, and so
4 any opinion I have is a direct reflection of
5 peers that I trust their judgment.

6 Q. You said you were not aware of
7 anyone at Healthy Advice purposefully
8 abandoning a similar piece of equipment at a
9 doctor's office that was not continuing its
03:43 10 relationship with Healthy Advice, right?

11 A. That is correct.

12 Q. If someone at that time had told
13 you that that was something that happened not
14 once but multiple times intentionally, would
15 that have been inconsistent with what you
16 were being told about that piece of equipment
17 by the people that you trusted at the time?

18 A. I don't understand the question.

19 Q. They were telling you at the
03:43 20 time, the people that you trusted --

21 A. Yes.

22 Q. -- for this type of information
23 that it was very important to keep the
24 information on that equipment secret, right?

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1 A. Correct.

2 Q. Would it have been consistent
3 with what they are telling -- they were
4 telling you or inconsistent with what they
5 were telling you if someone else had told you
6 that Healthy Advice had intentionally left
7 the same type of equipment with the same type
8 of information --

9 A. I can't comment on that --

03:44 10 MS. PARK: Objection, form,
11 vague --

12 A. -- I have never heard that,
13 never.

14 MS. PARK: -- compound.

15 A. I have no idea what you're
16 talking about. None. And I can't believe
17 they would've -- I don't think they did that,
18 I don't know. But I've never heard that.

03:44 19 Q. Right, but you were there at the
20 time and you were making decisions and
21 forming understandings of Healthy Advice's
22 concerns at the time that you remembered,
23 even to this day, when you first got a call
24 about this case, right?

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1 A. Yes.

2 Q. And that understanding and those
3 decisions were based on what, you're telling
4 me, you were told by the people that you
5 trusted for this type of information --

6 A. Correct.

7 Q. -- right? So I understand that
8 you're saying you were never informed of the
9 type of inconsistent information that I'm
10 describing, but what I'm asking you is, let's
11 assume that someone else from the company
12 came into your office and said, you know, I
13 know what they said.

14 A. Okay.

15 Q. I want to make you aware of
16 something. Actually, that type of equipment
17 with that type of information we sometimes
18 intentionally leave it at physicians' offices
19 who are cancelling our program, because the
20 hardware's outdated even though the
21 software's the same. That would've been --
22 and all I'm asking you is, that would have
23 been inconsistent with the other information
24 you were getting, correct?

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1 MS. PARK: Objection, form,
2 compound --

3 A. Not necessarily --

4 MS. PARK: -- vague.

5 A. -- if someone -- and, again, I'm
6 not aware of it, but if someone made a
7 business decision to do that because they
8 thought it was more costly to go out, pick it
9 up, or whatever you just said, bring it back.

03:45 10 The likelihood that a practice is going to
11 tear it apart and have any ability to even
12 understand what is in there, and the coding,
13 is something unknown, and on the likelihood
14 that that practice is going to go out and
15 start a business to compete with us is slim
16 to none, so, no.

17 Q. The practice can choose to do
18 what it wants with something that's abandoned
19 though, correct?

03:46 20 MS. PARK: Objection, form,
21 foundation --

22 A. I have no idea.

23 Q. And what it sounds like you're
24 saying is that the risk that this piece of

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1 equipment that was left at a practice,
2 theoretically, assume that it was, so the
3 risk that that would fall into the hands of a
4 competitor was of such little concern that
5 you think it would be reasonable for Healthy
6 Advice to not even pay for shipping costs to
7 get it back?

8 A. No, that is not what I said at
9 all --

03:46 10 MS. PARK: Objection, form --

11 A. -- that's not what I said at
12 all. I don't -- I don't know of that
13 happening. You asked me to say can you
14 imagine a situation where it would, and I
15 said I don't know, because I don't have the
16 facts in front of me, and what you had
17 implied, you actually said, to the best of my
18 recollection, what if they thought from a
19 business perspective it was cheaper, can you
03:46 20 ever -- I said, I don't know. What might
21 have been going through their head, maybe it
22 was a -- those were not my decisions, I
23 didn't even know it was ever done, so I have
24 no clue, none. I would never make a business

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1 judgment now, I would tell you that, I don't
2 know.

3 Q. Members of your team did not use
4 the customer management system; is that
5 accurate?

6 A. That is correct. You mean
7 putting -- inputting all that data? No.

8 Q. Did you ever receive reports
9 from -- of data coming out of customer
10 management system?

11 A. Well, certainly I got the
12 e-mail, you know, with excerpts out of it. I
13 don't believe I did. Now, what I will tell
14 you, and I don't know, because I'm not
15 familiar with the system itself, and don't
16 really know. From time to time on a going --
17 on every single program, we got report in our
18 senior executive teams, we're tracking here
19 with this many, you know, or we're having
20 this kind of -- so you would see a number in
21 handouts that somebody gave you at a meeting.
22 So, yes, I did see some things like that.

23 Q. Aggregated data, not individual
24 entries?

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1 A. That's correct.

2 Q. Were you familiar at all with
3 churn --

4 A. Sure.

5 Q. -- data?

6 A. Well, I don't know if I know
7 it's churn data, but I know what churn means
8 and when -- yes. And on those reports
9 sometimes they would stipulate by network,
03:48 10 you know, what the percent was.

11 Q. Did you ever engage with a
12 client in a discussion that involved churn
13 data?

14 A. Not to my knowledge.

15 MR. HANKINSON: Can we take a
16 break?

17 MS. PARK: Sure.

18 MR. McCKRACKEN: We're going off
19 the video record at 3:48 p.m.

03:56 20 (Break taken.)

21 MR. McCKRACKEN: We're back on
22 the video record at 3:55 P.M.

23 Q. Ms. Schnell, you mentioned
24 earlier that you did some consulting work for

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1 PDI prior to becoming an employee?

2 A. No.

3 Q. No. What was the consulting
4 work you mentioned?

5 A. When I left Healthy Advice.

6 Q. When you left Healthy Advice and
7 went to?

8 A. Valore.

9 Q. Valore, that's right, pardon me.

03:56 10 Who were your consulting clients,
11 just Valore?

12 A. Valore.

13 Q. Have you ever done any other
14 consulting?

15 A. No.

16 Q. And what was the nature of the
17 projects that they had you consulting on?

18 A. Well, it wasn't really a
19 project. They wanted me to help them
03:56 20 position their product and, you know, get
21 into certain clients to form partnerships
22 with in the healthcare.

23 Q. Did you feel qualified based on
24 your experience to provide them with

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1 strategies and opinions on that goal?

2 A. Yes and no. It's a new area, the
3 PBM space was a totally -- and they knew
4 that. It's a totally new area for me, so
5 part of it was rather relationships and
6 things like that, rather than having all the
7 product expertise, or solution I should say,
8 expertise.

9 Q. Do you serve on any boards?

03:57

10 A. No.

11 Q. Have you spoken at conferences
12 in the past?

13 A. Yes.

14 Q. Could you describe for me your
15 experience speaking at conferences up through
16 2012?

17 A. I was good.

18 Q. What's that?

19 A. I was good.

03:57

20 Q. About how often would you be
21 asked to speak?

22 A. I don't know, once or twice a
23 year.

24 Q. Once or twice a year starting

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1 in?

2 A. Oh, I don't remember, no.

3 Q. 2000 or earlier?

4 A. No, not earlier. But maybe even
5 2003-ish.

6 Q. What sorts of topics were you
7 invited to speak on?

03:58

8 A. It depended because they varied
9 when I was at PDI the type of things you have
10 to talk about and the panels you sit on when
11 you're talking about physicians versus the
12 direct to consumer. The last conference that
13 I chaired where I had to, you know, introduce
14 everybody and be the questioner and also
15 speak was the conference in Philadelphia on
16 customer centricity and trying to get
17 pharmaceutical companies to be closer to
18 their customers.

03:58

19 Q. And were the other topics that
20 you were invited to speak on similar to that,
21 topics within the industry?

22 A. Always within the industry,
23 sure.

24 Q. Could you give me just a couple

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1 more examples.

2 A. Gosh, one of them was a -- it
3 wasn't necessarily -- it was a portion of
4 speaking, but it was more a conference that
5 the professional side was hosting trying to
6 understand how to better connect with
7 doctors, and so I hosted a panel of
8 physicians across our networks to talk about
9 what was important to them, the type of
03:59 10 things that they would like.

11 Q. What's one more example?

12 A. I honestly don't remember.

13 Q. It's been a little bit of time?

14 A. Yeah.

15 Q. But other topics related to your
16 industry and field?

17 A. I don't understand the question.

18 Q. Your other speaking engagements,
19 the topics were always related to your
03:59 20 industry and field?

21 A. Yes.

22 MR. McCKRACKEN: Would you mind
23 if we pause and go off the record for just a
24 second.

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1 MR. HANKINSON: Sure.

2 (Break taken.)

3 MR. McCracken: We're back on the
4 video record at 3:59 p.m.

5 Q. Is there any other relevant
6 information or experience that would be on
7 your CV for a job or another opportunity to
8 consult or speak in your industry that I
9 haven't already asked about?

04:01 10 A. None that I can think of. I
11 mean, I don't know what you're looking for me
12 to say or, you know, what information you
13 want, so I don't.

14 Q. Just anything else that you
15 would include on a CV.

16 A. I don't think so.

17 Q. We pretty much covered it?

18 A. (Witness nods head
19 affirmatively.)

04:01 20 Q. Do you remember problems in the
21 2011 to 2012 time frame that Healthy Advice
22 had in building out the footprint of ACN?

23 A. Above and beyond what we have
24 spoken about here?

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1 Q. Yes. Any other recollection?

2 A. No, I don't.

3 Q. Linda Ruschau was closer to that
4 issue than you, correct?

5 A. Closer to what issue?

6 Q. Dealing with the build out of
7 ACN and interfacing with Humira --

8 A. Yes, that would be true.

9 Q. -- on that issue? Was there a
04:02 10 high amount of competition in 2011 to 2012 on
11 the sponsorship side in the field of digital
12 screens networks?

13 A. I think that's fair to say,
14 there's always competition in the
15 marketplace.

16 Q. So there's been a healthy amount
17 of competition since 2010 and before?

18 A. Yes, I think there's -- again,
19 it's a field that, you know, just one or two
04:03 20 don't own, so there's competition. Yes, I
21 would think that's correct to say.

22 Q. It's possible to compete with
23 Healthy Advice in a way that is ethical and
24 appropriate, correct?

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1 A. Absolutely.

2 Q. And it's possible to convince
3 providers' offices to switch from Healthy
4 Advice's programming to a competitor's
5 programming for legitimate reasons, correct?

6 A. I think so.

7 Q. So some amount of switches is
8 caused by legitimate factors, and then in
9 your opinion, some amount of switches might
04:03 10 have been influenced by illegitimate factors,
11 correct?

12 MS. PARK: Objection, form,
13 foundation.

14 A. You know, again, I'm not out
15 there, so I don't know. But I would assume it
16 can be a combination of. But unless I'm out
17 there talking to the doctors, why did you do
18 this, what was your understanding, I would
19 have no way of knowing that.

04:04 20 Q. As to the solution factor that
21 we talked about in the factors that
22 contribute to clients' decisions?

23 A. Right, yes.

24 Q. Is part of what clients care

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1 about the content that's displayed on digital
2 screen networks in the loops?

3 A. I think it's going to depend
4 upon, you know, your individual buyers. But
5 in -- because, you know, everybody is coming
6 from a different perspective, but I think in
7 some instances, content would be important to
8 them as you're educating on a particular
9 disease state, others simply will not be as
04:04 10 relevant all the time because it's something
11 that people are highly aware of and so it's
12 just really going to depend.

13 Q. Healthy Advice's contents in its
14 loops improved over the time frame from 2010
15 to 2012, correct?

16 A. I think from the day I got there
17 until the day I left it consistently
18 improved.

19 Q. That's something that --

04:05 20 A. And I don't mean because I did
21 it, I'm not that -- I just meant I noticed
22 it.

23 Q. And that's something that's done
24 to help Healthy Advice compete in that

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1 marketplace, correct?

2 A. I would -- yes, that is always
3 true, but it's also done because your job as
4 a marketer is to get someone to take -- make
5 a call to action to do something. And your
6 ability to do that has to continually be
7 refined.

8 Q. Do you have any answers that
9 you've given today as you think back over the
04:06 10 course of the deposition that you want to
11 explain further, expound upon, change in any
12 way? I just want to give you that
13 opportunity.

14 A. Yeah, thank you. I appreciate
15 that. I don't think so.

16 MR. HANKINSON: Okay. I don't
17 have any further questions.

18 DIRECT EXAMINATION

19 BY MS. PARK:

04:06 20 Q. I have a few questions. I'll
21 try to keep this as brief as we can. Ms.
22 Schnell, my name is Jeanah Park, I represent
23 PatientPoint and you for purposes of this
24 deposition. I just have a few questions for

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1 you, but you do understand that you're still
2 under oath.

3 A. I do.

4 Q. Okay.

5 A. I do now.

6 Q. I'm talking about the 2000 --
7 you know -- well, let's talk about the time
8 that you worked for Healthy Advice beginning
9 in, I believe, 2005. Who would you say are
04:06 10 Healthy Advice's competitors?

11 A. Well, those changed over time.
12 The largest competitor, to the best of my
13 knowledge, was Accent Health, and then over
14 the course of the years, other smaller
15 vendors actually probably came and went in
16 the digital space. Some of them, because
17 they went, I can't name them to you, but
18 later on, much later, was the advent of
19 Context. Companies like Care Media Holdings,
04:07 20 which has Kids Care and OB/GYN Network. But
21 those were the bigger ones I believe.

22 Q. What, in your opinion,
23 distinguishes or distinguished Healthy Advice
24 from its competitors?

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1 A. Well, as I said earlier, I think
2 it's always a combination of things, but the
3 one thing that Healthy Advice did uniquely
4 and clients consistently told us, was our
5 research, our metrics, our ability to measure
6 by doc what did I get. And we did that
7 consistently.

8 In fact, before we took a
9 client, our research was so good, so
04:07 10 proprietary that -- and I mentioned earlier
11 that we always signed CDAs because we're all
12 about delivering results and having satisfied
13 clients. Before we took a contract, as we
14 were calling on a client, we asked them for
15 particular data, and I don't remember the
16 fields anymore and I didn't analyze the data,
17 but we did specific ROI projections, if you
18 spend this with us, based on our confidence
19 in our product, the quality of our doctors,
04:08 20 and our ability to change behaviors, this is
21 the projected ROI for you. And we were so
22 confident of that, we actually guaranteed,
23 when necessary, those ROIs.

24 Q. And Healthy Advice did a lot of

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1 work and a lot of research to come up with
2 those ROIs, it was a complex formula?

3 A. Yes, it was.

4 Q. Do you -- was Healthy Advise
5 able to deliver on its ROIs to the sponsors
6 that you worked with during the time you were
7 there?

8 A. Yes, we were, consistently.

04:08 9 Q. And typically how long were
10 pharmaceutical sponsor contracts with Healthy
11 Advice?

12 A. Well, having come from, you
13 know, the IT space, I certainly tried to get
14 them the long-term contracts, but it's tough
15 to do in the PhRMA industry, they were
16 typically annual contracts. I will say based
17 on my time there, you'd have to go back and
18 check the records, I don't recall a client
19 ever, once they got in on the pharmaceutical
04:09 20 side, ever leaving until their product went
21 off patent. So some of them were there for
22 seven years, the entire time I was there. And
23 when the brand went off patent, then they
24 would leave, but I don't remember anybody,

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1 but, again, you could check with somebody, I
2 may have missed one, but by and large, I
3 don't remember anybody leaving once they got
4 in.

5 Q. Thank you. And why do you think
6 that brands stayed with Healthy Advice once
7 they started subscribing to the medium with
8 Healthy Advice?

9 A. Because we did return
04:09 10 consistently such high ROIs. We had brands
11 like an Ambien, for example, that was in our
12 -- started in our exam room network, expanded
13 into our digital screens and stayed for the
14 duration until they went off patent. You
15 have brands like, you know, Actos for
16 diabetes, they did the same thing. You have
17 brands like Lantus, did the same thing. They
18 bought up every space, it was seven, \$8
19 million, they bought up everything they could
04:10 20 get and they did that because of the
21 consistent results they received year over
22 year over year.

23 Q. Thank you. Just wanted to ask
24 you some questions about content. Were you

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1 familiar with the content that Healthy Advice
2 displayed in its offices --

3 A. Of course, yes.

4 Q. In the time that you were there,
5 Healthy Advice typically displayed soundless
6 loops on its digital screens --

7 A. That's correct.

8 Q. -- do you recall that? Do you
9 know why?

04:10 10 A. Yes. Actually, that was done by
11 design. We were founded by P&Gers and if you
12 guys -- well, you all are from Cincinnati,
13 Procter & Gamble, they don't do anything
14 without research. What's this? If I do
15 this, what's it going to do? And typically
16 what they found from researching out in
17 offices -- because when we entered that
18 waiting room space, we were not the first one
19 out there, Accent Health was out there first.

04:10 20 And so you say, am I going to enter as a me
21 too, or am I going to make a better
22 mousetrap, or what am I going to do? So they
23 went out and actually interviewed offices,
24 and they said what do you like about what you

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1 have and what would you change? And
2 consistently it was get rid of that sound.
3 Because what happens is, if I'm sitting there
4 and I'm in an office practice and that loop
5 over and over and over, and so what we found
6 was they would oftentimes turn it down, and
7 then when your brands are relying on talking
8 heads with nothing coming out, you don't get
9 much.

04:11 10 Q. And in your experience as head
11 of sales at Healthy Advice, were sponsors
12 receptive to the soundless medium in the
13 digital screens in waiting rooms?

14 A. Yes. That's why we had every
15 major brand.

16 MS. PARK: And -- actually,
17 that's all I have.

18 THE WITNESS: Okay.

19 RECROSS-EXAMINATION

04:11 20 BY MR. HANKINSON:

21 Q. I'll just follow up briefly.
22 During your time at Healthy Advice, which
23 extended through what part of 2012?

24 A. June 30, 2012.

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1 Q. June 30, 2012, you are not aware
2 of any brands that, once it started working
3 with Healthy Advice, stopped during the
4 period of 2010 to 2012?

5 A. Oh, gosh. Our brand -- I'm not,
6 again, but you got to go back and check,
7 because we had tons of brands, and we had so
8 many different networks, I could -- that's
9 three years -- or two-and-a-half, whatever it
04:12 10 is, I could be forgetting one, but I don't.

11 Q. At the same revenue levels?

12 A. No, not necessarily at the same
13 revenue levels.

14 Q. Sometimes the revenue level
15 would go down or go up over the years?

16 A. Yes.

17 Q. Would that be influenced by many
18 different factors?

19 A. Yes.

04:12 20 Q. Would it be possible to
21 generalize about the rank or relative
22 importance of the various factors that would
23 cause the brands to decrease or increase the
24 amount of money that they were paying Healthy

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1 Advice for their advertising, or is it
2 impossible to say across the board how much
3 each of those factors was weighing into that?

4 A. I don't think it's possible, and
5 not all of them are determined by the brand.
6 For example, if you're familiar, and I don't
7 expect you to be as familiar with the
8 pharmaceutical space. They had a real patent
9 cliff where a lot of big, major blockbusters
04:13 10 went off patent. And so, as I mentioned
11 earlier, we are all about results, that's all
12 it is, deliver. And so when we would look and
13 do an analysis, your function of your ROI is
14 a direct function of what's my cost and what
15 are my -- so as the smaller brands were
16 entering the marketplace, it may not have --
17 particularly in the primary care audience's
18 broad appeal, then if you -- to do business
19 with them, you may have to adjust your
04:14 20 pricing to deliver an ROI that works for
21 them.

22 Q. It would vary by individual
23 sponsor?

24 A. Well, yes and no. That's not --

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1 we have a rate card and typically that's what
2 it was. But if there was -- if a practice
3 wanted -- we surveyed our practices. I told
4 you, we were heavy in research, what do you
5 want? Because that's how you keep programs
6 in their offices, too, you got to bring them
7 education and drugs that they want. If there
8 was a drug that they wanted or a disease
9 state and we had to go after it, and we
10 knew it, you know, then we'd have to say it's
11 important to our practices, here's what we'll
12 do and adjust that so that it became a good
13 opportunity for our sponsor, a good
14 opportunity for the practices and a good
15 opportunity for the patient to be educated.
16 But by and large, we had a rate card.

04:14

17 Q. So sometimes the pricing of a
18 sponsor contract would be discounted, or in
19 any sense, go down because the practices
20 wanted that drug and disease state to be part
21 of the content loop?

22 A. And the brand itself, and based
23 on the amount of scrips or where it was
24 couldn't support that, or we thought it was

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1 important.

2 Q. And that would be an independent
3 factor in the pricing?

4 A. Correct. But by and large, we
5 had rate cards for most all of them, and we
6 stuck with that rate card.

7 Q. In response to Ms. Park's
8 questioning, I think at one point you said
9 something about having testified earlier that
04:15 10 you always had CDAs. Did you mean to say
11 that?

12 A. I'm not sure I said we always
13 had CDAs. I think you asked the question, did
14 we have CDAs with our clients, and I said by
15 and large, to the best of my recollection, we
16 did. And the reason being is because our
17 market approach is the fact that we do a
18 pre-analysis so we can know who's going to
19 win and who's not going to win, and for them
04:16 20 to release their data to us, they would say,
21 I'm not giving you that stuff until we have a
22 CDA.

23 Q. PatientPoint -- or excuse me,
24 Healthy Advice would enter into a CDA

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1 promising not to reveal the sponsor's
2 information to anybody prior to taking that
3 information from the sponsor. Is that what
4 you're saying?

5 MS. PARK: Objection, form.

6 A. I'm not sure what the question
7 is.

8 Q. The CDA protected the client's
9 information.

04:16 10 MS. PARK: Objection, form.

11 A. If it was -- we might say --
12 yes, the -- basically, yes.

13 Q. As revenue might go up or down
14 with a specific brand, prior to the time that
15 the drug at issue goes off patent, are there
16 a variety of factors that influence the level
17 of revenue?

18 A. It depends on the company, but,
19 yes.

04:17 20 Q. What are those factors?

21 A. The lifecycle management of the
22 drug, a launch product. And, again, this is
23 changing today I think from some articles I
24 read, but during the launch phase, they may

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1 have X-amount of dollars to spend, versus,
2 you know, in later lifecycle management.
3 Also, you have to look at their portfolio, is
4 it -- do they -- does the organization itself
5 deem it a growth driver for them, all of
6 those things come into play relative to the
7 budget and things like that that the brands
8 will have.

9 Q. What other factors?

04:18 10 A. I don't -- I can't think of any.

11 Q. There may be others, but you
12 don't remember them?

13 A. Or there may not be any, and I
14 remembered them all.

15 Q. So there are factors including
16 the two that you just mentioned that
17 influence the amount of revenue that comes in
18 the door for a drug that aren't necessarily
19 controlled by the patent life?

04:18 20 A. Well, sure. I mean, some part
21 of it is, and I think everybody faces it,
22 there's X-amount of budget dollars. And in
23 today's environment, I might want to spend it
24 on social media, I might want to spend it on

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1 digital, I might want to spend it on mass
2 DTC, and it's your job to convince them to
3 take it from this bucket to this bucket if
4 there's not enough. And we were pretty good
5 at that. Actually, let me correct that, we
6 were very good at that.

7 Q. That's a major -- the sales
8 activity of PatientPoint on the client's side
9 is an important driver of that?

04:19 10 MS. PARK: Objection, form.

11 A. In terms of revenue, I think
12 they play a significant role in terms of
13 revenue.

14 Q. And because there are multiple
15 factors that go into that, the revenue level
16 at which a particular brand is participating
17 in the networks, cannot necessarily be
18 predicted to stay exactly the same year over
19 year over year, correct?

04:19 20 MS. PARK: Objection, form,
21 foundation. Misstates prior testimony.

22 A. We had pretty good visibility,
23 we had very good visibility on our clients
24 and their renewal rates, very good.

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1 Q. But many factors would influence
2 it, and it went up and down over the years,
3 correct?

4 MS. PARK: Objection, form.

5 Q. That's what you said earlier?

6 A. No, I don't think I did. But if
7 I did, let me re -- I stated that when brands
8 came into our network, they stayed in, okay?
9 When you asked as we were acquiring new

04:20 10 clients how that might happen, we might have
11 to vary, but brands tended to stay in, the
12 prices stayed consistent, etc., etc. and that
13 would be correct. Accurate and correct.

14 Q. The revenue coming in from each
15 brand, didn't you say that varied by year?

16 A. No, I didn't. I said that it
17 could vary by brand, not necessarily for the
18 same brand every year. There's a distinction
19 there.

04:20 20 Q. I see. And in any event, that
21 revenue would be affected by the factors that
22 you listed earlier?

23 A. Yes, I'm sorry. I'm just
24 shaking my head.

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1 MR. HANKINSON: Okay. That's all
2 for me.

3 MS. PARK: I have no further
4 questions. We'll reserve signature.

5 MR. McCRACKEN: We're going off
6 the video record at 4:20 p.m.

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DEBORAH SCHNELL

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(DEPOSITION CONCLUDED AT 4:20 p.m.)

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I, ANN M. BELMONT, RPR, the undersigned, a duly qualified notary public within and for the State of Ohio, do hereby certify that DEBORAH SCHNELL was by me first duly sworn to depose the truth and nothing but the truth; foregoing is the deposition given at said time and place by said witness; deposition was taken pursuant to stipulations hereinbefore set forth; deposition was taken by me in stenotype and transcribed by me by means of computer; deposition was provided to witness for examination and signature outside the presence of the Notary Public. I am neither a relative of any of the parties or any of their counsel; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D) and have no financial interest in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Cincinnati, Ohio this 27th day of April, 2014.

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My commission expires: ANN M. BELMONT, RPR
December 4, 2015 Notary Public - State of Ohio

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